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HOUSE BILL NO.785

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Earley
on March 7, 1996)

(Patron Prior to Substitute—Delegate Reynolds)

A BILL to amend and reenact §§ 16.1-241, 16.1-339, 16.1-341, 16.1-342, 16.1-344 and 16.1-348 of the Code of Virginia, as they are currently effective and as they may become effective, and §§ 16.1-336, 16.1-343, 16.1-345, 16.1-347 and 37.1-88 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 16.1-349, 18.2-75.1, 18.2-75.2 and 18.2-75.3 relating to inpatient treatment of minors; abortion for minors; commitment; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-241, 16.1-339, 16.1-341, 16.1-342, 16.1-344 and 16.1-348 of the Code of Virginia, as they are currently effective and as they may become effective, and §§ 16.1-336, 16.1-343, 16.1-345, 16.1-347 and 37.1-88 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 16.1-349, 18.2-75.1, 18.2-75.2 and 18.2-75.3 as follows:

§ 16.1-241. Jurisdiction.

The judges of the juvenile and domestic relations district court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county over all cases, matters and proceedings involving:

A. The custody, visitation, support, control or disposition of a child:

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent, except where the jurisdiction of the juvenile court has been terminated under the provisions of § 16.1-269.6;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

3. Whose custody, visitation or support is a subject of controversy or requires determination. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, except as provided in § 16.1-244;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or whose parent or parents for good cause desire to be relieved of his care and custody;

5. Where the termination of residual parental rights and responsibilities is sought. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in § 16.1-244;

6. Who is charged with a traffic infraction as defined in § 46.2-100.

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party with a legitimate interest shall not include any person (i) whose parental rights have been involuntarily terminated by court order if the child subsequently has been legally adopted, or (ii) who has been convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366 when the child who is the subject of the petition was conceived as a result of such violation. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

B. The admission of minors for inpatient treatment in a mental health facility in accordance with the provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the commitment of a mentally ill person or judicial certification of eligibility for admission to a treatment facility of a mentally retarded person in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1. Jurisdiction of the commitment and certification of adults shall be concurrent with the general district court.

C. Except as provided in subsections D and H hereof, judicial consent to such activities as may

60 require parental consent may be given for a child who has been separated from his parents, guardian,
61 legal custodian or other person standing in loco parentis and is in the custody of the court when such
62 consent is required by law.

63 D. Judicial consent for emergency surgical or medical treatment for a child who is neither married
64 nor has ever been married, when the consent of his parent, guardian, legal custodian or other person
65 standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person
66 standing in loco parentis (i) is not a resident of this Commonwealth, (ii) his whereabouts is unknown,
67 (iii) he cannot be consulted with promptness, reasonable under the circumstances or (iv) fails to give
68 such consent or provide such treatment when requested by the judge to do so.

69 E. Any person charged with deserting, abandoning or failing to provide support for any person in
70 violation of law.

71 F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

72 1. Who has been abused or neglected;

73 2. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204
74 or is otherwise before the court pursuant to subdivision A 4 of this section;

75 3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court
76 finds that such person has by overt act or omission induced, caused, encouraged or contributed to the
77 conduct of the child complained of in the petition.

78 G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other
79 person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services
80 which are required by law to be provided for that child or such child's parent, guardian, legal custodian
81 or other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not
82 exclusive of that of courts having equity jurisdiction as provided in § 16.1-244.

83 H. Judicial consent to apply for work permit for a child when such child is separated from his
84 parents, legal guardian or other person standing in loco parentis.

85 I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or
86 neglect of children or with any violation of law which causes or tends to cause a child to come within
87 the purview of this law, or with any other offense against the person of a child. In prosecution for
88 felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not
89 there is probable cause.

90 J. All offenses in which one family or household member is charged with an offense in which
91 another family or household member is the victim and all offenses under § 18.2-49.1.

92 In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to
93 determining whether or not there is probable cause. Any objection based on jurisdiction under this
94 subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial,
95 before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it
96 shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for
97 challenging directly or collaterally the jurisdiction of the court in which the case is tried. For purposes
98 of this subsection, "family or household member," as defined in § 16.1-228, shall also be construed to
99 include parent and child, stepparent and stepchild, brothers and sisters, and grandparent and grandchild,
100 regardless of whether such persons reside in the same home.

101 K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily
102 relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such
103 parental rights. No such petition shall be accepted, however, after the child has been placed in the home
104 of adoptive parents.

105 L. Any person who seeks spousal support after having separated from his spouse. A decision under
106 this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court.
107 A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

108 M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or
109 § 16.1-279.1.

110 N. Any person who escapes or remains away without proper authority from a residential care facility
111 in which he had been placed by the court or as a result of his commitment to the Virginia Department
112 of Youth and Family Services.

113 O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.) of this chapter.

114 P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13
115 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered
116 by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the
117 juvenile and domestic relations district court.

118 Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

119 R. Petitions for the purpose of obtaining an emergency protective order pursuant to § 16.1-253.4.

120 S. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

121 T. Petitions to enforce any request for information or subpoena that is not complied with or to

review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect pursuant to § 63.1-248.6:1.

U. Petitions filed in connection with parental placement adoption consent hearings, pursuant to § 63.1-220.3. Such proceedings shall be advanced on the docket so as to be heard by the court within ten days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

V. *Petitions for obtaining authorization for a physician to perform an abortion pursuant to § 18.2-75.2.*

The ages specified in this law refer to the age of the child at the time of the acts complained of in the petition.

Notwithstanding any other provision of law no fees shall be charged by a sheriff for the service of any process in a proceeding pursuant to subdivision 3 of subsection A or subsections M or R of this section.

§ 16.1-241. (Delayed effective date) Jurisdiction.

The judges of the family court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each family court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the family court or courts of the adjoining city or county over all cases, matters and proceedings involving:

A. The custody, visitation, support, control or disposition of a child:

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent, except where the jurisdiction of the family court has been terminated under the provisions of § 16.1-269.6;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

3. Whose custody, visitation or support is a subject of controversy or requires determination;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or whose parent or parents for good cause desire to be relieved of his care and custody;

5. Where the termination of residual parental rights and responsibilities is sought;

6. Who is charged with a traffic infraction as defined in § 46.2-100.

The authority of the family court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party with a legitimate interest shall not include any person (i) whose parental rights have been involuntarily terminated by court order if the child subsequently has been legally adopted, or (ii) who has been convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366 when the child who is the subject of the petition was conceived as a result of such violation. The authority of the family court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

B. The admission of minors for inpatient treatment in a mental health facility in accordance with the provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the commitment of a mentally ill person or judicial certification of eligibility for admission to a treatment facility of a mentally retarded person in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1. Jurisdiction of the commitment and certification of adults shall be concurrent with the general district court.

C. Except as provided in subsections D and H hereof, judicial consent to such activities as may require parental consent may be given for a child who has been separated from his parents, guardian, legal custodian or other person standing in loco parentis and is in the custody of the court when such consent is required by law.

D. Judicial consent for emergency surgical or medical treatment for a child who is neither married nor has ever been married, when the consent of his parent, guardian, legal custodian or other person standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person standing in loco parentis (i) is not a resident of this Commonwealth, (ii) his whereabouts is unknown, (iii) cannot be consulted with promptness, reasonable under the circumstances or (iv) fails to give such consent or provide such treatment when requested by the judge to do so.

183 E. Any person charged with deserting, abandoning or failing to provide support for any person in
184 violation of law pursuant to Chapter 5 (§ 20-61 et seq.) of Title 20.

185 F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

186 1. Who has been abused or neglected;

187 2. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204
188 or is otherwise before the court pursuant to subdivision A 4 of this section;

189 3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court
190 finds that such person has by overt act or omission induced, caused, encouraged or contributed to the
191 conduct of the child complained of in the petition.

192 G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other
193 person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services
194 which are required by law to be provided for that child or such child's parent, guardian, legal custodian
195 or other person standing in loco parentis.

196 H. Judicial consent to apply for work permit for a child when such child is separated from his
197 parents, legal guardian or other person standing in loco parentis.

198 I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or
199 neglect of children or with any violation of law which causes or tends to cause a child to come within
200 the purview of this law, or with any other offense against the person of a child. In prosecution for
201 felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not
202 there is probable cause.

203 J. All offenses in which one family or household member is charged with an offense in which
204 another family or household member is the victim and all offenses under § 18.2-49.1.

205 In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to
206 determining whether or not there is probable cause. Any objection based on jurisdiction under this
207 subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial,
208 before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it
209 shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for
210 challenging directly or collaterally the jurisdiction of the court in which the case is tried. For purposes
211 of this subsection, "family or household member," as defined in § 16.1-228, shall also be construed to
212 include parent and child, stepparent and stepchild, brothers and sisters, and grandparent and grandchild,
213 regardless of whether such persons reside in the same home.

214 K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily
215 relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such
216 parental rights. No such petition shall be accepted, however, after the child has been placed in the home
217 of adoptive parents.

218 L. Any person who seeks spousal support after having separated from his spouse.

219 M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or
220 § 16.1-279.1.

221 N. Any person who escapes or remains away without proper authority from a residential care facility
222 in which he had been placed by the court or as a result of his commitment to the Virginia Department
223 of Youth and Family Services.

224 O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.) of this chapter.

225 P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13
226 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered
227 by a family court upon the filing of a certified copy of such order in the family court.

228 Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

229 R. Petitions for the purpose of obtaining an emergency protective order pursuant to § 16.1-253.4.

230 S. Suits for divorce and for annulling or affirming marriage in accordance with Title 20.

231 T. Suits for separate maintenance.

232 U. Suits for equitable distribution based on a foreign decree in accordance with § 20-107.3.

233 V. Petitions for adoption.

234 W. Petitions for change of name when incident to suits for annulling or affirming marriage, divorce,
235 or adoption or when ancillary to any action within the jurisdiction of the family court.

236 X. Petitions regarding records of birth pursuant to Chapter 7 (§ 32.1-249 et seq.) of Title 32.1.

237 Y. Judicial review of school board actions pursuant to § 22.1-87 and of hearing officer decisions
238 pursuant to §§ 22.1-214 and 22.1-214.1.

239 Z. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

240 AA. Petitions to enforce any request for information or subpoena that is not complied with or to
241 review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect
242 pursuant to § 63.1-248.6:1.

243 BB. Petitions filed in connection with parental placement adoption consent hearings, pursuant to
244 § 63.1-220.3. Such proceedings shall be advanced on the docket so as to be heard by the court within

ten days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

CC. Petitions for obtaining authorization for a physician to perform an abortion pursuant to § 18.2-75.2.

The ages specified in this law refer to the age of the child at the time of the acts complained of in the petition.

Notwithstanding any other provision of law no fees shall be charged by a sheriff for the service of any process in a proceeding pursuant to subdivision 3 of subsection A or subsections M or R of this section.

§ 16.1-336. Definitions.

When used in this article, unless the context otherwise requires:

"Consent" means the voluntary, express, and informed agreement to treatment in a mental health facility by a minor fourteen years of age or older and by a parent or a legally authorized custodian.

"Inpatient treatment" means placement for observation, diagnosis, or treatment of mental illness in a psychiatric hospital or in any other type of mental health facility determined by the State Mental Health, Mental Retardation and Substance Abuse Services Board to be substantially similar to a psychiatric hospital with respect to restrictions on freedom and therapeutic intrusiveness.

"Judge" means a judge of a juvenile and domestic relations district court or family court, as the case may be, and includes a special justice appointed pursuant to § 37.1-88.

"Least restrictive alternative" means the treatment and conditions of treatment which, separately and in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit or to protect the minor or others from physical injury.

"Mental health facility" means a public or private facility for the treatment of mental illness operated or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Mental illness" means a substantial disorder of the minor's cognitive, volitional, or emotional processes that demonstrably and significantly impairs judgment or capacity to recognize reality or to control behavior. "Mental illness" may include substance abuse, which is the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to induce mental, emotional, or physical impairment and cause socially dysfunctional or socially disordering behavior. Mental retardation, head injury, a learning disability, or a seizure disorder is not sufficient, in itself, to justify a finding of mental illness within the meaning of this article.

"Minor" means a person less than eighteen years of age.

"Parent" means (i) a biological or adoptive parent who has legal custody of the minor, including either parent if custody is shared under a joint decree or agreement, (ii) a biological or adoptive parent with whom the minor regularly resides, (iii) a person judicially appointed as a legal guardian of the minor, or (iv) a person who exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption or otherwise by operation of law. The director of the local department of social services, or his designee, may stand as the minor's parent when the minor is in the legal custody of the local department of social services.

"Qualified evaluator" means a psychiatrist or a psychologist licensed in Virginia by either the Board of Medicine or the Board of Psychology who is skilled in the diagnosis and treatment of mental illness in minors and familiar with the provisions of this article. If such psychiatrist or psychologist is unavailable, any mental health professional (i) licensed in Virginia through the Department of Health Professions or (ii) employed by a community services board who is skilled in the diagnosis and treatment of mental illness in minors and who is familiar with the provisions of this article may serve as the qualified evaluator.

"Treatment" means any planned intervention intended to improve a minor's functioning in those areas which show impairment as a result of mental illness.

§ 16.1-339. Parental admission of an objecting minor fourteen years of age or older.

A. A minor fourteen years of age or older who objects to admission may be admitted to a willing facility for up to seventy-two hours, pending the review required by subsections B and C of this section, upon the application of a parent. If admission is sought to a state hospital, the community services board serving the area in which the minor resides shall provide the examination required by subsection B of § 16.1-338 and shall ensure that the necessary written findings, except the minor's consent, have been made before approving the admission.

B. A minor admitted under this section shall be examined within twenty-four hours of his admission by a qualified evaluator designated by the community services board serving the area where the facility is located who is not and will not be treating the minor and who has no significant financial interest in the minor's hospitalization. The evaluator shall prepare a report which shall include written findings as to whether:

1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusory thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;

2. The minor is in need of inpatient treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and

3. Inpatient treatment is the least restrictive alternative that meets the minor's needs. The qualified evaluator shall submit his report to the juvenile and domestic relations district court for the jurisdiction in which the facility is located.

C. Upon admission of a minor under this section, the facility shall immediately file a petition for judicial approval with the juvenile and domestic relations district court for the jurisdiction in which the facility is located. A copy of this petition shall be delivered to the minor's consenting parent. Upon receipt of the petition and of the evaluator's report submitted pursuant to subsection B, the ~~juvenile and domestic relations district court~~ judge or special justice appointed pursuant to § 37.1-88 shall appoint a guardian ad litem for the minor. The ~~court~~ judge and the guardian ad litem shall review the petition and evaluator's report, and shall ascertain the views of the minor, the minor's consenting parent, the evaluator, and the attending psychiatrist. The ~~court~~ judge shall conduct ~~its~~ his review in such place and manner, including the facility, as ~~it~~ he deems to be in the best interests of the minor. Based upon ~~its~~ his review and the recommendations of the guardian ad litem, the ~~court~~ judge shall order one of the following dispositions:

1. If the ~~court~~ judge finds that the minor does not meet the criteria for admission specified in subsection B, the ~~court~~ judge shall issue an order directing the facility to release the minor into the custody of the parent who consented to the minor's admission. However, nothing herein shall be deemed to affect the terms and provisions of any valid court order of custody affecting the minor.

2. If the ~~court~~ judge finds that the minor meets the criteria for admission specified in subsection B, the ~~court~~ judge shall issue an order authorizing continued hospitalization of the minor for up to ninety days on the basis of the parent's consent.

Within ten days after the admission of a minor under this section, the director of the facility or the director's designee shall ensure that an individualized plan of treatment has been prepared by the provider responsible for the minor's treatment and has been explained to the parent consenting to the admission and to the minor. A copy of the plan shall also be provided to the guardian ad litem. The minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with his ability to understand and participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional goals against which the success of treatment may be measured.

3. If the ~~court~~ judge determines that the available information is insufficient to permit an informed determination regarding whether the minor meets the criteria specified in subsection B, ~~the court shall~~ schedule a commitment hearing ~~which shall be scheduled and~~ shall be conducted in accordance with the procedures specified in §§ 16.1-341 through 16.1-345. The minor may be detained in the hospital for up to seventy-two additional hours pending the holding of the commitment hearing.

D. A minor admitted under this section who rescinds his objection may be retained in the hospital pursuant to § 16.1-338.

E. If the parent who consented to a minor's admission under this section revokes his consent at any time, the minor shall be released within forty-eight hours to the parent's custody unless the minor's continued hospitalization is authorized pursuant to § 16.1-340 or § 16.1-345.

§ 16.1-339. (Delayed effective date) Parental admission of an objecting minor fourteen years of age or older.

A. A minor fourteen years of age or older who objects to admission may be admitted to a willing facility for up to seventy-two hours, pending the review required by subsections B and C of this section, upon the application of a parent. If admission is sought to a state hospital, the community services board serving the area in which the minor resides shall provide the examination required by subsection B of § 16.1-338 and shall ensure that the necessary written findings, except the minor's consent, have been made before approving the admission.

B. A minor admitted under this section shall be examined within twenty-four hours of his admission by a qualified evaluator designated by the community services board serving the area where the facility is located who is not and will not be treating the minor and who has no significant financial interest in the minor's hospitalization. The evaluator shall prepare a report which shall include written findings as to whether:

1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is

experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusory thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;

2. The minor is in need of inpatient treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and

3. Inpatient treatment is the least restrictive alternative that meets the minor's needs. The qualified evaluator shall submit his report to the family court for the jurisdiction in which the facility is located.

C. Upon admission of a minor under this section, the facility shall immediately file a petition for judicial approval with the family court for the jurisdiction in which the facility is located. A copy of this petition shall be delivered to the minor's consenting parent. Upon receipt of the petition and of the evaluator's report submitted pursuant to subsection B, the family court judge or special justice appointed pursuant to § 37.1-88 shall appoint a guardian ad litem for the minor. The court judge and the guardian ad litem shall review the petition and evaluator's report, and shall ascertain the views of the minor, the minor's consenting parent, the evaluator, and the attending psychiatrist. The court judge shall conduct its his review in such place and manner, including the facility, as ithe deems to be in the best interests of the minor. Based upon its his review and the recommendations of the guardian ad litem, the court judge shall order one of the following dispositions:

1. If the court judge finds that the minor does not meet the criteria for admission specified in subsection B, the court judge shall issue an order directing the facility to release the minor into the custody of the parent who consented to the minor's admission. However, nothing herein shall be deemed to affect the terms and provisions of any valid court order of custody affecting the minor.

2. If the court judge finds that the minor meets the criteria for admission specified in subsection B, the court judge shall issue an order authorizing continued hospitalization of the minor for up to ninety days on the basis of the parent's consent.

Within ten days after the admission of a minor under this section, the director of the facility or the director's designee shall ensure that an individualized plan of treatment has been prepared by the provider responsible for the minor's treatment and has been explained to the parent consenting to the admission and to the minor. A copy of the plan shall also be provided to the guardian ad litem. The minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with his ability to understand and participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional goals against which the success of treatment may be measured.

3. If the court judge determines that the available information is insufficient to permit an informed determination regarding whether the minor meets the criteria specified in subsection B, the court shall schedule a commitment hearing which shall be scheduled and shall be conducted in accordance with the procedures specified in §§ 16.1-341 through 16.1-345. The minor may be detained in the hospital for up to seventy-two additional hours pending the holding of the commitment hearing.

D. A minor admitted under this section who rescinds his objection may be retained in the hospital pursuant to § 16.1-338.

E. If the parent who consented to a minor's admission under this section revokes his consent at any time, the minor shall be released within forty-eight hours to the parent's custody unless the minor's continued hospitalization is authorized pursuant to § 16.1-340 or § 16.1-345.

§ 16.1-341. Involuntary commitment; petition; hearing scheduled; notice and appointment of counsel.

A. A petition for the involuntary commitment of a minor may be filed with the juvenile and domestic relations district court by a parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult. The petition shall include the name and address of the petitioner and the minor and shall set forth in specific terms why the petitioner believes the minor meets the criteria for involuntary commitment specified in § 16.1-345. The petition shall be taken under oath.

If a commitment hearing has been scheduled by a juvenile and domestic relations district judge pursuant to subdivision 3 of subsection C of § 16.1-339, the petition for judicial approval filed by the facility under subsection C of § 16.1-339 shall serve as the petition for involuntary commitment as long as such petition complies in substance with the provisions of this subsection.

B. Upon the filing of a petition for involuntary commitment of a minor, the juvenile and domestic relations district court may schedule a hearing which shall occur no sooner than twenty-four hours and no later than seventy-two hours from the time the petition was filed. If the seventy-two-hour period expires on a Saturday, Sunday or other legal holiday, the seventy-two hours shall be extended to the next day that is not a Saturday, Sunday or legal holiday. In no case may the time period between the filing of the petition and the hearing under § 16.1-344 exceed ninety-six hours.

If the petition is not dismissed, copies of the petition, together with a notice of the hearing, shall be served immediately upon the minor and the minor's parents, if they are not petitioners. No later than

24 hours before the hearing, the ~~court~~ judge shall appoint counsel to represent the minor, unless it has determined that the minor has retained counsel. Upon the request of the minor's counsel, for good cause shown, and after notice to the petitioner and all other persons receiving notice of the hearing, the ~~court~~ judge may continue the hearing once for a period not to exceed seventy-two hours.

§ 16.1-341. (Delayed effective date) Involuntary commitment; petition; hearing scheduled; notice and appointment of counsel.

A. A petition for the involuntary commitment of a minor may be filed with the family court by a parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult. The petition shall include the name and address of the petitioner and the minor and shall set forth in specific terms why the petitioner believes the minor meets the criteria for involuntary commitment specified in § 16.1-345. The petition shall be taken under oath.

If a commitment hearing has been scheduled by a family court judge pursuant to subdivision 3 of subsection C of § 16.1-339, the petition for judicial approval filed by the facility under subsection C of § 16.1-339 shall serve as the petition for involuntary commitment as long as such petition complies in substance with the provisions of this subsection.

B. Upon the filing of a petition for involuntary commitment of a minor, the family court may schedule a hearing which shall occur no sooner than twenty-four hours and no later than seventy-two hours from the time the petition was filed. If the seventy-two-hour period expires on a Saturday, Sunday or other legal holiday, the seventy-two hours shall be extended to the next day that is not a Saturday, Sunday or legal holiday. In no case may the time period between the filing of the petition and the hearing under § 16.1-344 exceed ninety-six hours.

If the petition is not dismissed, copies of the petition, together with a notice of the hearing, shall be served immediately upon the minor and the minor's parents, if they are not petitioners. No later than twenty-four hours before the hearing, the ~~court~~ judge shall appoint counsel to represent the minor, unless it has determined that the minor has retained counsel. Upon the request of the minor's counsel, for good cause shown, and after notice to the petitioner and all other persons receiving notice of the hearing, the ~~court~~ judge may continue the hearing once for a period not to exceed seventy-two hours.

§ 16.1-342. Involuntary commitment; clinical evaluation.

Upon the filing of a petition for involuntary commitment, the ~~juvenile and domestic relations district court~~ judge shall direct the community services board serving the area in which the minor is located to arrange for an evaluation, if one has not already been performed pursuant to subsection B of § 16.1-339, by a qualified evaluator who is not and will not be treating the minor and who has no significant financial interest in the facility to which the minor would be committed. The petitioner, all public agencies, and all providers or programs which have treated or who are treating the minor, shall cooperate with the evaluator and shall promptly deliver, upon request and without charge, all records of treatment or education of the minor. At least twenty-four hours before the scheduled hearing, the evaluator shall submit to the court a written report which includes the evaluator's opinion regarding whether the minor meets the criteria for involuntary commitment specified in § 16.1-345. The evaluator shall attend the hearing as a witness.

§ 16.1-342. (Delayed effective date) Involuntary commitment; clinical evaluation.

Upon the filing of a petition for involuntary commitment, the ~~family court~~ judge shall direct the community services board serving the area in which the minor is located to arrange for an evaluation, if one has not already been performed pursuant to subsection B of § 16.1-339, by a qualified evaluator who is not and will not be treating the minor and who has no significant financial interest in the facility to which the minor would be committed. The petitioner, all public agencies, and all providers or programs which have treated or who are treating the minor, shall cooperate with the evaluator and shall promptly deliver, upon request and without charge, all records of treatment or education of the minor. At least twenty-four hours before the scheduled hearing, the evaluator shall submit to the court a written report which includes the evaluator's opinion regarding whether the minor meets the criteria for involuntary commitment specified in § 16.1-345. The evaluator shall attend the hearing as a witness.

§ 16.1-343. Involuntary commitment; duties of attorney for the minor.

As far as possible in advance of a hearing conducted under § 16.1-344, or an appeal from such a hearing, the minor's attorney shall interview the minor; the minor's parent, if available; the petitioner; and the qualified evaluator. He shall interview all other material witnesses, and examine all relevant diagnostic and other reports. The obligation of the minor's attorney during the hearing or appeal is to interview witnesses, obtain independent experts when possible, cross-examine adverse witnesses, present witnesses on behalf of the minor, articulate the wishes of the minor, and otherwise fully represent the minor in the proceeding. ~~Counsel appointed by the court~~ Court-appointed counsel shall be compensated in an amount not to exceed \$100.

§ 16.1-344. Involuntary commitment; hearing.

The court shall summon to the hearing all material witnesses requested by either the minor or the petitioner. All testimony shall be under oath. The rules of evidence shall apply; however, the evaluator's

report required by § 16.1-342 shall be admissible into evidence by stipulation of the parties. The petitioner, minor and, with leave of court for good cause shown, any other person shall be given the opportunity to present evidence and cross-examine witnesses. The hearing shall be closed to the public unless the minor and petitioner request that it be open. Within thirty days of any final order committing the minor or dismissing the petition, the minor or petitioner shall have the right to appeal de novo to the circuit court having jurisdiction where the minor was committed or where the minor is hospitalized pursuant to the commitment order. The ~~juvenile and domestic relations district court~~ judge shall appoint an attorney to represent any minor desiring to appeal who does not appear to be already represented.

§ 16.1-344. (Delayed effective date) Involuntary commitment; hearing.

The court shall summon to the hearing all material witnesses requested by either the minor or the petitioner. All testimony shall be under oath. The rules of evidence shall apply; however, the evaluator's report required by § 16.1-342 shall be admissible into evidence by stipulation of the parties. The petitioner, minor and, with leave of court for good cause shown, any other person shall be given the opportunity to present evidence and cross-examine witnesses. The hearing shall be closed to the public unless the minor and petitioner request that it be open. Within thirty days of any final order committing the minor or dismissing the petition, the minor or petitioner shall have the right to appeal de novo to the circuit court having jurisdiction where the minor was committed or where the minor is hospitalized pursuant to the commitment order. The ~~family court~~ judge shall appoint an attorney to represent any minor desiring to appeal who does not appear to be already represented.

§ 16.1-345. Involuntary commitment; criteria.

The ~~court~~ judge shall order the involuntary commitment of the minor to a mental health facility for treatment for a period not to exceed ninety days if ~~it~~ he finds, by clear and convincing evidence, that:

1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusory thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;

2. The minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and

3. If inpatient treatment is ordered, such treatment is the least restrictive alternative that meets the minor's needs. If the ~~court~~ judge finds that inpatient treatment is not the least restrictive treatment, ~~the court~~ he may order the minor to participate in outpatient or other clinically appropriate treatment.

If the parent or parents with whom the minor resides are not willing to approve the proposed commitment, the ~~court~~ judge shall order inpatient treatment only if ~~it~~ he finds, in addition to the criteria specified in this section, that such treatment is necessary to protect the minor's life, health, or normal development, and that issuance of a removal order or protective order is authorized by § 16.1-252 or § 16.1-253.

Upon finding that the best interests of the minor so require, the ~~court~~ judge may enter an order directing either or both of the minor's parents to comply with reasonable conditions relating to the minor's treatment.

If the minor is committed to inpatient treatment, such placement shall be in a mental health facility for inpatient treatment designated by the community services board which serves the political subdivision in which the minor was evaluated pursuant to § 16.1-342. If the community services board does not provide a placement recommendation at the hearing, the minor shall be placed in a mental health facility designated by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services. The judge shall order the sheriff to transport the minor to the designated mental health facility as specified in § 37.1-71. The transportation of the committed minor by the minor's parent may be authorized at the discretion of the judge.

§ 16.1-347. Fees and expenses for qualified evaluators.

Every qualified evaluator appointed by the ~~court~~ judge to conduct an evaluation pursuant to § 16.1-342 who is not regularly employed by the Commonwealth shall be compensated for fees and expenses as provided in § 37.1-89. The cost of an evaluation conducted pursuant to § 16.1-338 or § 16.1-339 shall be considered for all purposes a cost of treatment and shall be compensated as a professional fee billed by or on behalf of the qualified evaluator to the patient or any responsible third party payor.

§ 16.1-348. Availability of judge.

The chief judge of every juvenile and domestic relations district court shall establish and require that a judge, as defined in ~~§ 37.1-1~~ *substitute judge or special justice appointed pursuant to § 37.1-88*, be available seven days a week, twenty-four hours a day, for the purpose of performing the duties established by this article.

§ 16.1-348. (Delayed effective date) Availability of judge.

552 The chief judge of every family court shall establish and require that a judge, as defined in ~~§ 37.1-1~~
553 *substitute judge or special justice appointed pursuant to § 37.1-88*, be available seven days a week,
554 twenty-four hours a day, for the purpose of performing the duties established by this article.

555 *§ 16.1-349. Special justices to perform duties of judges.*

556 *A special justice appointed pursuant to § 37.1-88 may perform any duty required of a judge by this*
557 *article.*

558 *§ 37.1-88. Special justices to perform duties of judge under this title.*

559 The chief judge of each judicial circuit may appoint one or more special justices, for the purpose of
560 performing the duties required of a judge by this title *or Article 16 (§ 16.1-335 et seq.) of Chapter 11 of*
561 *Title 16.1*. At the time of appointment each such special justice shall be a person licensed to practice
562 law in this Commonwealth, shall have all the powers and jurisdiction conferred upon a judge by this
563 title and shall serve under the supervision and at the pleasure of the chief judge making the
564 appointment. Within six months of appointment, each special justice appointed on or after January 1,
565 1996, shall complete a minimum training program as prescribed by the Executive Secretary of the
566 Supreme Court. Special justices shall collect the fees prescribed in this title for such service and shall
567 retain fees unless the governing body of the county or city in which such services are performed shall
568 provide for the payment of an annual salary for such services, in which event such fees shall be
569 collected and paid into the treasury of such county or city.

570 *§ 18.2-75.1. Minor's abortion; requirements and procedures; penalty.*

571 *For purposes of this section and § 18.2-75.2:*

572 A. "Authorized person" means: (i) a parent or duly appointed legal guardian or custodian of the
573 minor or (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult
574 sibling, with whom the minor regularly and customarily resides and who has care and control of the
575 minor.

576 "Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical
577 procedure or to induce a miscarriage as provided in §§ 18.2-73, 18.2-74 or §18.2-74.1.

578 "Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid
579 marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any
580 of the armed forces of the United States; (iii) willingly living separate and apart from his or her parents
581 or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an order of
582 emancipation pursuant to Article 15 § 16.1-331 et seq. of Chapter 11 of Title 16.1.

583 B. A physician shall not knowingly perform an abortion upon an unemancipated minor unless:

584 1. The physician or his agent has given actual notice of his intention to perform such abortion to an
585 authorized person, either in person or by telephone, at least twenty-four hours previous to the
586 performance of the abortion; or

587 2. The physician or his agent, after a reasonable effort to notify an authorized person, has mailed
588 notice to an authorized person by certified mail, addressed to such person at his usual place of abode,
589 with return receipt requested, at least seventy-two hours prior to the performance of the abortion; or

590 3. At least one authorized person is present with the minor seeking the abortion; or

591 4. The minor has delivered to the physician a written statement signed by an authorized person and
592 witnessed by a competent adult that the authorized person knows of the minor's intent to have an
593 abortion; or

594 5. The minor has delivered to the physician a copy of a court order entered pursuant to § 18.2-75.2
595 authorizing the abortion.

596 C. Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation
597 of this section shall be guilty of a Class 3 misdemeanor.

598 *§ 18.2-75.2. Judicial procedure in lieu of notification of minor's abortion.*

599 If an unemancipated minor elects not to allow notification of an authorized person as provided in
600 § 18.2-75.1, the minor may petition a court of competent jurisdiction in accordance with § 16.1-241 to
601 obtain authorization for a physician to perform an abortion.

602 After a hearing, a judge may authorize a physician to perform an abortion upon finding that the
603 minor is mature and capable of giving informed consent to the proposed abortion. If the judge
604 determines that the minor is not mature, the judge shall, after a hearing, determine whether the
605 performance of an abortion upon the minor without notification of an authorized person would be in the
606 minor's best interest, and if the court finds that the abortion would be in the minor's best interest, it
607 shall so authorize a physician.

608 The minor may participate in the court proceedings on her own behalf, and the court may appoint a
609 guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and
610 shall, upon her request, appoint counsel for her.

611 Court proceedings under this section shall be confidential and shall be given precedence over other
612 pending matters so that the court may reach a decision promptly and without delay in order to serve the
613 best interests of the minor. Court proceedings under this section shall be heard as soon as practicable

but in no event later than four days after the petition is filed.

An expedited confidential appeal to the circuit court shall be available to any minor for whom the court denies an order authorizing an abortion without notification. Any such appeal shall be heard and decided no later than five days after the appeal is filed. An order authorizing an abortion without notification shall not be subject to appeal.

No filing fees shall be required of the minor at trial or upon appeal.

If either the original court or the circuit court fails to act within the time periods required by this section, the court before which the proceeding is pending shall immediately authorize a physician to perform the abortion without notification to an authorized person.

§ 18.2-75.3. When notification or judicial approval not required.

The provisions of § 18.2-75.1 shall not apply:

1. If the minor declares that she is abused or neglected and the attending physician has reason to suspect that the minor may be an abused or neglected child as defined in § 63.1-248.2 and reports the suspected abuse or neglect in accordance with § 63.1-248.3; or

2. If, in the attending physician's good faith medical judgment, (i) the abortion is medically necessary immediately to avert the minor's death or (ii) there is insufficient time to provide the required notice or judicial authorization because a delay would create a serious risk of substantial impairment of a major bodily function or substantial physical injury. The attending physician shall certify in the minor's medical record as to any determinations under this subdivision.