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## HOUSE BILL NO. 1734

Offered January 8, 1997

A BILL to amend and reenact § 16.1-266 of the Code of Virginia, as it is currently effective and as it may become effective, relating to children in need of services; guardians ad litem.

Patron—Orrock

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That § 16.1-266 of the Code of Virginia, as it is currently effective and as it may become effective, is amended and reenacted as follows:**

§ 16.1-266. Appointment of counsel.

A. Prior to the hearing by the court of any case involving a child who is alleged to be *in need of services*, abused or neglected or who is the subject of an entrustment agreement or a petition terminating residual parental rights or is otherwise before the court pursuant to subdivision A 4 of § 16.1-241, the court shall appoint a discreet and competent attorney-at-law as guardian ad litem to represent the child pursuant to § 16.1-266.1.

B. Prior to the detention review hearing or the adjudicatory or transfer hearing by the court of any case involving a child who is alleged to be ~~in need of services~~, in need of supervision or delinquent, such child and his or her parent, guardian, legal custodian or other person standing in loco parentis shall be informed by a judge, clerk or probation officer of the child's right to counsel and of the liability of the parent, guardian, legal custodian or other person standing in loco parentis for the costs of such legal services pursuant to § 16.1-267 and be given an opportunity to:

1. Obtain and employ counsel of the child's own choice; or

2. If the court determines that the child is indigent within the contemplation of the law pursuant to the guidelines set forth in § 19.2-159 and his or her parent, guardian, legal custodian or other person standing in loco parentis does not retain an attorney for the child, a statement of indigence substantially in the form provided by § 19.2-159 and a financial statement shall be executed by such child, and the court shall appoint an attorney-at-law to represent him; or

3. Waive the right to representation by an attorney, if the court finds the child and the parent, guardian, legal custodian or other person standing in loco parentis of the child consent, in writing, to such waiver and that the interests of the child and the parent, guardian, legal custodian or other person standing in loco parentis in the proceeding are not adverse. Such written waiver shall be in accordance with law and shall be filed with the court records of the case.

C. Prior to the hearing by the court of any case involving a parent, guardian or other adult charged with abuse or neglect of a child or a parent or guardian who could be subjected to the loss of residual parental rights and responsibilities, such parent, guardian or other adult shall be informed by a judge, clerk or probation officer of his right to counsel and be given an opportunity to:

1. Obtain and employ counsel of the parent's, guardian's or other adult's own choice; or

2. If the court determines that the parent, guardian or other adult is indigent within the contemplation of the law pursuant to the guidelines set forth in § 19.2-159, a statement substantially in the form provided by § 19.2-159 and a financial statement shall be executed by such parent, guardian or other adult and the court shall appoint an attorney-at-law to represent him; or

3. Waive the right to representation by an attorney in accordance with the provisions of § 19.2-160.

D. In all other cases which in the discretion of the court require counsel or a guardian ad litem to represent the interests of the child or children or the parent or guardian, a discreet and competent attorney-at-law may be appointed by the court. However, in cases where the custody of a child or children is the subject of controversy or requires determination and each of the parents or other persons claiming a right to custody is represented by counsel, the court shall not appoint counsel or a guardian ad litem to represent the interests of the child or children unless the court finds, at any stage in the proceedings in a specific case, that the interests of the child or children are not otherwise adequately represented.

§ 16.1-266. (Delayed effective date) Appointment of counsel.

A. Prior to the hearing by the court of any case involving a child who is alleged to be *in need of services*, abused or neglected or who is the subject of an entrustment agreement or a petition terminating residual parental rights or is otherwise before the court pursuant to subdivision A 4 of § 16.1-241, the court shall appoint a discreet and competent attorney-at-law as guardian ad litem to represent the child pursuant to § 16.1-266.1.

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60 B. Prior to the detention review hearing or the adjudicatory or transfer hearing by the court of any  
61 case involving a child who is alleged to be ~~in need of services~~, in need of supervision or delinquent,  
62 such child and his or her parent, guardian, legal custodian or other person standing in loco parentis shall  
63 be informed by a judge, clerk or probation officer of the child's right to counsel and of the liability of  
64 the parent, guardian, legal custodian or other person standing in loco parentis for the costs of such legal  
65 services pursuant to § 16.1-267 and be given an opportunity to:

66 1. Obtain and employ counsel of the child's own choice; or

67 2. If the court determines that the child is indigent within the contemplation of the law pursuant to  
68 the guidelines set forth in § 19.2-159 and his or her parent, guardian, legal custodian or other person  
69 standing in loco parentis does not retain an attorney for the child, a statement of indigence substantially  
70 in the form provided by § 19.2-159 and a financial statement shall be executed by such child, and the  
71 court shall appoint an attorney-at-law to represent him; or

72 3. Waive the right to representation by an attorney, if the court finds the child and the parent,  
73 guardian, legal custodian or other person standing in loco parentis of the child consent, in writing, to  
74 such waiver and that the interests of the child and the parent, guardian, legal custodian or other person  
75 standing in loco parentis in the proceeding are not adverse. Such written waiver shall be in accordance  
76 with law and shall be filed with the court records of the case.

77 C. Prior to the hearing by the court of any case involving a parent, guardian or other adult charged  
78 with abuse or neglect of a child or a parent or guardian who could be subjected to the loss of residual  
79 parental rights and responsibilities, such parent, guardian or other adult shall be informed by a judge,  
80 clerk or probation officer of his right to counsel and be given an opportunity to:

81 1. Obtain and employ counsel of the parent's, guardian's or other adult's own choice; or

82 2. If the court determines that the parent, guardian or other adult is indigent within the contemplation  
83 of the law pursuant to the guidelines set forth in § 19.2-159, a statement substantially in the form  
84 provided by § 19.2-159 and a financial statement shall be executed by such parent, guardian or other  
85 adult and the court shall appoint an attorney-at-law to represent him; or

86 3. Waive the right to representation by an attorney in accordance with the provisions of § 19.2-160.

87 D. In all other cases which in the discretion of the court require counsel or a guardian ad litem to  
88 represent the interests of the child or children or the parent or guardian, a discreet and competent  
89 attorney-at-law may be appointed by the court. However, (i) in cases where the custody of a child or  
90 children is the subject of controversy or requires determination and each of the parents or other persons  
91 claiming a right to custody is represented by counsel, the court shall not appoint counsel or a guardian  
92 ad litem to represent the interests of the child or children unless the court finds, at any stage in the  
93 proceedings in a specific case, that the interests of the child or children are not otherwise adequately  
94 represented; and (ii) in suits for divorce, annulment or affirmation of marriage, separate maintenance, or  
95 equitable distribution based on a foreign decree; in petitions for adoption, amendment of a record of  
96 birth, and change of name; or judicial review of school board actions or hearing officer decisions, the  
97 court shall appoint counsel or a guardian ad litem to represent the interests of a party only as provided  
98 in § 8.01-9.