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HOUSE BILL NO. 658

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact §§ 16.1-266 and 16.1-267 of the Code of Virginia, relating to juveniles; appointment of counsel; indigency.

Patron—Hope

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 16.1-266 and 16.1-267 of the Code of Virginia are amended and reenacted as follows:****§ 16.1-266. Appointment of counsel and guardian ad litem.**

A. Prior to the hearing by the court of any case involving a child who is alleged to be abused or neglected or who is the subject of an entrustment agreement or a petition seeking termination of residual parental rights or who is otherwise before the court pursuant to subdivision A 4 of § 16.1-241 or § 63.2-1230, 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 hearing held pursuant to § 16.1-250, the court shall appoint a qualified and competent attorney-at-law to represent the child unless an attorney has been retained and appears on behalf of the child. ~~For the purposes of appointment of counsel for the detention hearing held pursuant to § 16.1-250 only, a child's indigence shall be presumed.~~ Nothing in this subsection shall prohibit a judge from releasing a child from detention prior to appointment of counsel.

C. Subsequent to the detention hearing, if any, and prior to 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 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. Request that the court appoint counsel; provided that before counsel is appointed or the court continues any appointment previously made pursuant to subsection B, the court shall determine that the child is indigent within the contemplation of the law pursuant to guidelines set forth in § 19.2-159 by requiring the child's parent, guardian, legal custodian or other person standing in loco parentis to complete a statement of indigence substantially in the form provided by § 19.2-159 and a financial statement, and upon determination of indigence the court shall appoint an attorney from the list maintained by the Indigent Defense Commission pursuant to § 19.2-163.01 to represent the child; 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, and such waiver is consistent with the interests of the child. Such written waiver shall be in accordance with law and shall be filed with the court records of the case. A child who is alleged to have committed an offense that would be a felony if committed by an adult, may waive such right only after he consults with an attorney and the court determines that his waiver is free and voluntary. The waiver shall be in writing, signed by both the child and the child's attorney and shall be filed with the court records of the case.

For the purposes of appointment of counsel for a delinquency proceeding, a child shall be considered indigent.

D. A judge, clerk or probation officer shall inform the parent or guardian of his right to counsel prior to the adjudicatory hearing of a petition in which a child is alleged to be abused or neglected or at risk of abuse or neglect as provided in subdivision A 2a of § 16.1-241 and prior to a hearing at which a parent could be subjected to the loss of residual parental rights. In addition, prior to the hearing by the court of any case involving any other adult charged with abuse or neglect of a child, this adult shall be informed of his right to counsel. This adult and the parent or guardian shall 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.

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59 If the identity or location of a parent or guardian is not reasonably ascertainable or a parent or
60 guardian fails to appear, the court shall consider appointing an attorney-at-law to represent the interests
61 of the absent parent or guardian, and the hearing may be held.

62 Prior to a hearing at which a child is the subject of an initial foster care plan filed pursuant to
63 § 16.1-281, a foster care review hearing pursuant to § 16.1-282 and a permanency planning hearing
64 pursuant to § 16.1-282.1, the court shall consider appointing counsel to represent the child's parent or
65 guardian.

66 E. In those cases described in subsections A, B, C and D, which in the discretion of the court require
67 counsel or a guardian ad litem to represent the child or children or the parent or guardian or other adult
68 party in addition to the representation provided in those subsections, a discreet and competent
69 attorney-at-law may be appointed by the court as counsel or a guardian ad litem.

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

77 G. Any state or local agency, department, authority or institution and any school, hospital, physician
78 or other health or mental health care provider shall permit a guardian ad litem or counsel for the child
79 appointed pursuant to this section to inspect and copy, without the consent of the child or his parents,
80 any records relating to the child whom the guardian or counsel represents upon presentation by him of a
81 copy of the court order appointing him or a court order specifically allowing him such access. Upon
82 request therefor by the guardian ad litem or counsel for the child made at least 72 hours in advance, a
83 mental health care provider shall make himself available to conduct a review and interpretation of the
84 child's treatment records which are specifically related to the investigation. Such a request may be made
85 in lieu of or in addition to inspection and copying of the records.

86 **§ 16.1-267. Compensation of appointed counsel.**

87 A. When the court appoints counsel to represent a child pursuant to subsection A of § 16.1-266 and,
88 after an investigation by the court services unit, finds that the parents are financially able to pay for the
89 attorney and refuse to do so, the court shall assess costs against the parents for such legal services in the
90 maximum amount of that awarded the attorney by the court under the circumstances of the case,
91 considering such factors as the ability of the parents to pay and the nature and extent of the counsel's
92 duties in the case. Such amount shall not exceed the maximum amount specified in subdivision 1 of
93 § 19.2-163 if the action is in district court.

94 ~~When the court appoints counsel to represent a child pursuant to subsection B or C of § 16.1-266~~
95 ~~and, after an investigation by the court services unit, finds that the parents are financially able to pay for~~
96 ~~the attorney in whole or in part and refuse to do so, the court shall assess costs in whole or in part~~
97 ~~against the parents for such legal services in the amount awarded the attorney by the court. Such amount~~
98 ~~shall not exceed \$100 if the action is in circuit court or the maximum amount specified in subdivision 1~~
99 ~~of § 19.2-163 if the action is in district court. In determining the financial ability of the parents to pay~~
100 ~~for an attorney to represent the child, the court shall utilize the financial statement required by~~
101 ~~§ 19.2-159.~~

102 In all other cases, except as provided in § 16.1-343, counsel appointed to represent a child shall be
103 compensated for his services pursuant to § 19.2-163.

104 B. When the court appoints counsel to represent a parent, guardian or other adult pursuant to
105 § 16.1-266, such counsel shall be compensated for his services pursuant to § 19.2-163.

106 C. 1. In any proceeding in which the court appoints a guardian ad litem to represent a child pursuant
107 to § 16.1-266, the court shall order the parent, or other party with a legitimate interest who has filed a
108 petition in such proceeding, to reimburse the Commonwealth the costs of such services in an amount not
109 to exceed the amount awarded the guardian ad litem by the court. If the court determines that such party
110 is unable to pay, the required reimbursement may be reduced or eliminated. No party whom the court
111 determines to be indigent pursuant to § 19.2-159 shall be required to pay reimbursement except where
112 the court finds good cause to do so. The Executive Secretary of the Supreme Court shall administer the
113 guardian ad litem program and shall report August 1 and January 1 of each year to the Chairmen of the
114 House Committee on Appropriations and the Senate Committee on Finance and Appropriations on the
115 amounts paid for guardian ad litem purposes, amounts reimbursed, savings achieved, and management
116 actions taken to further enhance savings under this program.

117 2. For good cause shown, or upon the failure by the guardian ad litem to substantially comply with
118 the standards adopted for attorneys appointed as guardians ad litem pursuant to § 16.1-266.1, the court
119 may adjust the cost sought by the guardian ad litem of such services.

120 3. For the purposes of this subsection, "other party with a legitimate interest" shall not include child

121 welfare agencies or local departments of social services.