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HOUSE BILL NO. 2596

Offered January 13, 2025

Prefiled January 13, 2025

A BILL to amend and reenact § 16.1-266 of the Code of Virginia, relating to appointment of guardian ad litem; child in need of services or supervision.

Patrons—Rasoul, Herring, Keys-Gamarra and LeVere Bolling

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 is 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; or in need of supervision or, the court shall appoint a discreet and competent attorney-at-law as guardian ad litem to represent such child pursuant to § 16.1-266.1 and may, as the court deems necessary, appoint a discreet and competent attorney-at-law as counsel to represent such child. 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 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.

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

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

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

63 Prior to a hearing at which a child is the subject of an initial foster care plan filed pursuant to § 16.1-281, a  
64 foster care review hearing pursuant to § 16.1-282 and a permanency planning hearing pursuant to §  
65 16.1-282.1, the court shall consider appointing counsel to represent the child's parent or 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 party  
68 in addition to the representation provided in those subsections, a discreet and competent attorney-at-law may  
69 be appointed by the court as counsel or a guardian ad litem.

70 F. In all other cases ~~which~~ *that* 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 may  
72 be appointed by the court. However, in cases where the custody of a child ~~or children~~ is the subject of  
73 controversy or requires determination and each of the parents or other persons claiming a right to custody is  
74 represented by counsel, the court shall not appoint counsel or a guardian ad litem to represent the interests of  
75 the child ~~or children~~ unless the court finds, at any stage in the proceedings in a specific case, that the interests  
76 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, or  
78 other health or mental health care provider shall permit a guardian ad litem or counsel for the child appointed  
79 pursuant to this section to inspect and copy, without the consent of the child or his parents, any records  
80 relating to the child whom the guardian or counsel represents upon presentation by him of a copy of the court  
81 order appointing him or a court order specifically allowing him such access. Upon request therefor by the  
82 guardian ad litem or counsel for the child made at least 72 hours in advance, a mental health care provider  
83 shall make himself available to conduct a review and interpretation of the child's treatment records ~~which~~ *that*  
84 are specifically related to the investigation. Such a request may be made in lieu of or in addition to inspection  
85 and copying of the records.