

HOUSE BILL NO. 1992

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Herring)

A BILL to amend and reenact § 16.1-296 of the Code of Virginia, relating to juvenile and domestic relations district courts; notice of appeal to the circuit court.

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

**1. That § 16.1-296 of the Code of Virginia is amended and reenacted as follows:**

**§ 16.1-296. Jurisdiction of appeals; procedure.**

A. From any final order or judgment of the juvenile court affecting the rights or interests of any person coming within its jurisdiction, an appeal may be taken to the circuit court within 10 days from the entry of a final judgment, order, or conviction and shall be heard de novo. ~~However, in~~ In any such case, a copy of the notice of appeal shall be served by the appealing party or his counsel upon the other party and his counsel within such 10-day period. The failure to comply with the notice requirements of this subsection alone shall not void the perfection of an appeal.

A1. In a case arising under the Uniform Interstate Family Support Act (§ 20-88.32 et seq.), a party may take an appeal pursuant to this section within 30 days from entry of a final order or judgment. Protective orders issued pursuant to § 16.1-279.1 in cases of family abuse and orders entered pursuant to § 16.1-278.2 are final orders from which an appeal may be taken.

B. Upon receipt of notice of such appeal the juvenile court shall forthwith transmit to the attorney for the Commonwealth a report incorporating the results of any investigation conducted pursuant to § 16.1-273, which shall be confidential in nature and made available only to the court and the attorney for the defendant (i) after the guilt or innocence of the accused has been determined or (ii) after the court has made its findings on the issues subject to appeal. After final determination of the case, the report and all copies thereof shall be forthwith returned to such juvenile court.

27 C. Where an appeal is taken by a child on a finding that he or she is delinquent and on a disposition  
28 pursuant to § 16.1-278.8, trial by jury on the issue of guilt or innocence of the alleged delinquent act may  
29 be had on motion of the child, the attorney for the Commonwealth or the circuit court judge. If the alleged  
30 delinquent act is one which, if committed by an adult, would constitute a felony, the child shall be entitled  
31 to a jury of 12 persons. In all other cases, the jury shall consist of seven persons. If the jury in such a trial  
32 finds the child guilty, disposition shall be by the judge pursuant to the provisions of § 16.1-278.8 after  
33 taking into consideration the report of any investigation made pursuant to § 16.1-237 or 16.1-273.

34 C1. In any hearing held upon an appeal taken by a child on a finding that he is delinquent and on  
35 a disposition pursuant to § 16.1-278.8, the provisions of § 16.1-302 shall apply mutatis mutandis, except  
36 in the case of trial by jury which shall be open. If proceedings in the circuit court are closed pursuant to  
37 this subsection, any records or portions thereof relating to such closed proceedings shall remain  
38 confidential.

39 C2. Where an appeal is taken by a juvenile on a finding that he is delinquent and on a disposition  
40 pursuant to § 16.1-278.8 and the juvenile is in a secure facility pending the appeal, the circuit court, when  
41 practicable, shall hold a hearing on the merits of the case within 45 days of the filing of the appeal. Upon  
42 receipt of the notice of appeal from the juvenile court, the circuit court shall provide a copy of the order  
43 and a copy of the notice of appeal to the attorney for the Commonwealth within seven days after receipt  
44 of notice of an appeal. The time limitations shall be tolled during any period in which the juvenile has  
45 escaped from custody. A juvenile held continuously in secure detention shall be released from  
46 confinement if there is no hearing on the merits of his case within 45 days of the filing of the appeal. The  
47 circuit court may extend the time limitations for a reasonable period of time based upon good cause shown,  
48 provided the basis for such extension is recorded in writing and filed among the papers of the proceedings.

49 D. When an appeal is taken in a case involving termination of parental rights brought under § 16.1-  
50 283, the circuit court shall hold a hearing on the merits of the case within 90 days of the perfecting of the  
51 appeal. An appeal of the case to the Court of Appeals shall take precedence on the docket of the Court.

52 E. Where an appeal is taken by an adult on a finding of guilty of an offense within the jurisdiction  
53 of the juvenile and domestic relations district court, the appeal shall be dealt with in all respects as is an

54 appeal from a general district court pursuant to §§ 16.1-132 through 16.1-137; however, where an appeal  
55 is taken by any person on a charge of nonsupport, the procedure shall be as is provided for appeals in  
56 prosecutions under Chapter 5 (§ 20-61 et seq.) of Title 20.

57 F. In all other cases on appeal, proceedings in the circuit court shall be heard without a jury;  
58 however, hearing of an issue by an advisory jury may be allowed, in the discretion of the judge, upon the  
59 motion of any party. An appeal from an order of protection issued pursuant to § 16.1-279.1 shall be given  
60 precedence on the docket of the court over other civil appeals taken to the circuit court from the district  
61 courts and shall be assigned a case number within two business days of receipt of such appeal.

62 If a party files an appeal of a district court order of protection entered pursuant to § 16.1-279.1,  
63 such notice of appeal shall be on a form prescribed by the Office of the Executive Secretary. The district  
64 court clerk shall contact the appellate court to determine whether the hearing on the appeal shall be set by  
65 the appellate court on (i) a date scheduled by the district court clerk with the court, (ii) on the next docket  
66 call date, or (iii) a date set for district court appeals. Once the hearing date is set and the appeal documents  
67 have been transmitted, the appellate court shall have the parties served with notice of the appeal stating  
68 the date and time of the hearing in accordance with subdivision 1 of § 8.01-296. No such hearing on the  
69 appeal shall be heard in the appellate court unless the appellee has been so served with such notice or  
70 notice has been waived by the non-moving party.

71 G. Costs, taxes and fees on appealed cases shall be assessed only in those cases in which a trial fee  
72 could have been assessed in the juvenile and domestic relations court and shall be collected in the circuit  
73 court, except that the appeal to circuit court of any case in which a fee either was or could have been  
74 assessed pursuant to § 16.1-69.48:5 shall also be in accordance with § 16.1-296.2.

75 H. No appeal bond shall be required of a party appealing from an order of a juvenile and domestic  
76 relations district court except for that portion of any order or judgment establishing a support arrearage or  
77 suspending payment of support during pendency of an appeal. In cases involving support, no appeal shall  
78 be allowed until the party applying for the same or someone for him gives bond, in an amount and with  
79 sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment as may  
80 be rendered on appeal if the appeal is perfected or, if not perfected, then to satisfy the judgment of the

81 court in which it was rendered. Upon appeal from a conviction for failure to support or from a finding of  
82 civil or criminal contempt involving a failure to support, the juvenile and domestic relations district court  
83 may require the party applying for the appeal or someone for him to give bond, with or without surety, to  
84 insure his appearance and may also require bond in an amount and with sufficient surety to secure the  
85 payment of prospective support accruing during the pendency of the appeal. An appeal will not be  
86 perfected unless such appeal bond as may be required is filed within 30 days from the entry of the final  
87 judgment or order. However, no appeal bond shall be required of the Commonwealth or when an appeal  
88 is proper to protect the estate of a decedent, an infant, a convict or an insane person, or the interest of a  
89 county, city or town.

90 If bond is furnished by or on behalf of any party against whom judgment has been rendered for  
91 money, the bond shall be conditioned for the performance and satisfaction of such judgment or order as  
92 may be entered against the party on appeal, and for the payment of all damages which may be awarded  
93 against him in the appellate court. If the appeal is by a party against whom there is no recovery, the bond  
94 shall be conditioned for the payment of any damages as may be awarded against him on the appeal. The  
95 provisions of § 16.1-109 shall apply to bonds required pursuant to this subsection.

96 This subsection shall not apply to release on bail pursuant to other subsections of this section or §  
97 16.1-298.

98 I. In all cases on appeal, the circuit court in the disposition of such cases shall have all the powers  
99 and authority granted by the chapter to the juvenile and domestic relations district court. Unless otherwise  
100 specifically provided by this Code, the circuit court judge shall have the authority to appoint counsel for  
101 the parties and compensate such counsel in accordance with the provisions of Article 6 (§ 16.1-266 et  
102 seq.) of this chapter.

103 J. In any case which has been referred or transferred from a circuit court to a juvenile court and an  
104 appeal is taken from an order or judgment of the juvenile court, the appeal shall be taken to the circuit  
105 court in the same locality as the juvenile court to which the case had been referred or transferred.

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