

00-096

COURTS NOT OF RECORD: JUVENILE AND DOMESTIC RELATIONS COURTS.

Amendment in 2000 House Bill 950 is not necessary to authorize law-enforcement officers of Commonwealth to detain nonresident runaway child. Current law authorizes law-enforcement officers to take into custody out-of-state runaway child who is within Commonwealth.

The Honorable William C. Mims
Member, Senate of Virginia
December 29, 2000

You inquire whether it is necessary for the 2001 Session of the General Assembly to consider House Bill 950, which was carried over from the 2000 Session by the Senate Committee on Courts of Justice.¹ House Bill 950 amends § 16.1-246(G) of the *Code of Virginia* to allow a child who has run away from home, "*including a child who is not a resident of the Commonwealth,*" to be taken into immediate custody.² Section 16.1-246 is a portion of Article 4, Chapter 11 of Title 16.1, relating to the immediate custody, arrest, detention and shelter care of children.³

You advise that House Bill 950 was introduced at the request of certain law-enforcement officials because they believe that § 16.1-246(G) does not provide authority to detain out-of-state runaways. You also advise that members of the Senate Courts of Justice Committee believe that law-enforcement officials already have the requisite authority without the proposed amendment. Furthermore, you state that some committee members believe that inserting the phrase "including a child who is not a resident of the Commonwealth" in § 16.1-246(G) would call into question the authority of law-enforcement officials over nonresident children in other subsections of § 16.1-246 and in other statutes in Article 4 that are nonspecific regarding authority over such children.

Therefore, you ask whether § 16.1-246(G) is applicable to a child who is within the Commonwealth and has run away from a home located outside the Commonwealth.

Section 16.1-246 provides:

No child may be taken into immediate custody except:

(G) When a law-enforcement officer has probable cause to believe that a child (i) has run away from home

"The jurisdiction, practice, and procedure of the juvenile and domestic relations district courts [of the Commonwealth] are entirely statutory."⁴ Section 16.1-228 defines the terms used in Chapter 11 of Title 16.1. "Child" is defined as "a person less than eighteen years of age."⁵ Section 16.1-228 clearly does not confine the definition of "child" to include only a person under the age of eighteen who is a resident of the Commonwealth. In addition, pursuant to Article IV(a), § 16.1-323 of the Interstate Compact Relating to Juveniles, a juvenile⁶ who has run away from another state party to the compact "may be taken into custody without a

requisition." The Interstate Compact permits the return of the juvenile "to another state party to this compact."⁷

The Supreme Court of Virginia has stated, "[i]f the language used [in a statute] is plain and unambiguous, and its meaning clear and definite, effect must be given to it regardless of what courts think of its wisdom or policy."⁸ In such cases courts must find the meaning within the statute itself.⁹ It is my opinion that the proposed amendment to § 16.1-246(G) in House Bill 950 is not necessary to authorize law-enforcement officers of the Commonwealth to detain a runaway child who is not a resident of the Commonwealth. I am, therefore, of the opinion that § 16.1-246(G) is already applicable to a child within the Commonwealth who is an out-of-state runaway.

¹House Bill 950 was introduced in the 2000 Session of the General Assembly on January 24 and continued to the 2001 Session on March 1.

²House Bill 950, *supra* (amending § 16.1-246(G)).

³Sections 16.1-246 to 16.1-258.

⁴*Walker v. Dept. of Public Welfare*, 223 Va. 557, 562, 290 S.E. 2d 887, 890 (1982); see *Juvenile and Domestic Relations District Court Law*, tit. 16.1, ch. 11, §§ 16.1-226 to 16.1-361.

⁵Section 16.1-228.

⁶A "juvenile," as that term is used in Article IV, "means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor." Section 16.1-323 art. IV(c).

⁷Section 16.1-323 art. IV(a).

⁸*Fairbanks, etc., Co. v. Cape Charles*, 144 Va. 56, 63, 131 S.E. 437, 439 (1926); see also *Town of South Hill v. Allen*, 177 Va. 154, 165, 12 S.E.2d 770, 774 (1941); *Hammer v. Commonwealth*, 169 Va. 355, 364-65, 193 S.E. 496, 499-500 (1937); *Woodward v. Staunton*, 161 Va. 671, 674, 171 S.E. 590, 591 (1933).

⁹See *Town of South Hill v. Allen*, 177 Va. at 164-65, 12 S.E.2d at 774; *Hammer v. Commonwealth*, 169 Va. at 364-65, 193 S.E. at 499-500; *Woodward v. Staunton*, 161 Va. at 674, 171 S.E. at 591; *Fairbanks, etc., Co. v. Cape Charles*, 144 Va. at 63, 131 S.E. at 439.