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**HOUSE BILL NO. 1080**

Offered January 14, 2004

Prefiled January 14, 2004

A *BILL to amend and reenact § 16.1-260 of the Code of Virginia, relating to notification of superintendent of certain crimes committed by juvenile.*

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Patron—Parrish

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Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That § 16.1-260 of the Code of Virginia is amended and reenacted as follows:**

§ 16.1-260. Intake; petition; investigation.

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection H of this section and in § 16.1-259. The form and content of the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support for a child. Complaints, requests and the processing of petitions to initiate a case shall be the responsibility of the intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own motion with the clerk, (ii) the Department of Social Services may file support petitions on its own motion with the clerk, and (iii) any attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject of the petition is a child alleged to be in need of services, in need of supervision or delinquent. Complaints alleging abuse or neglect of a child shall be referred initially to the local department of social services in accordance with the provisions of Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2. Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is receiving child support services or public assistance. No individual who is receiving support services or public assistance shall be denied the right to file a petition or motion to establish, modify or enforce an order for support of a child. If the petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance of process, shall forward a copy of the petition or motion, together with notice of the court date, to the Division of Child Support Enforcement.

B. The appearance of a child before an intake officer may be by (i) personal appearance before the intake officer or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, an intake officer may exercise all powers conferred by law. All communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

When the court service unit of any court receives a complaint alleging facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241, the unit, through an intake officer, may proceed informally to make such adjustment as is practicable without the filing of a petition or may authorize a petition to be filed by any complainant having sufficient knowledge of the matter to establish probable cause for the issuance of the petition.

An intake officer may proceed informally on a complaint alleging a child is in need of services, in need of supervision or delinquent only if the juvenile (i) is not alleged to have committed a violent juvenile felony or (ii) has not previously been proceeded against informally or adjudicated in need of supervision or delinquent. A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is in need of supervision or delinquent shall be filed with the court if the juvenile had previously been proceeded against informally by intake or had been adjudicated in need of supervision or delinquent.

If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and the attendance officer has provided documentation to the intake officer that the relevant school division has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with the court. The intake officer may defer filing the complaint for 90 days and proceed informally by developing a truancy plan. The intake officer may proceed informally only if the juvenile has not previously been proceeded against informally or adjudicated in need of supervision for failure to comply

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59 with compulsory school attendance as provided in § 22.1-254. The juvenile and his parent or parents,  
60 guardian or other person standing in loco parentis must agree, in writing, for the development of a  
61 truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents,  
62 guardian or other person standing in loco parentis participate in such programs, cooperate in such  
63 treatment or be subject to such conditions and limitations as necessary to ensure the juvenile's  
64 compliance with compulsory school attendance as provided in § 22.1-254. The intake officer may refer  
65 the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an  
66 interagency interdisciplinary team approach. The team may include qualified personnel who are  
67 reasonably available from the appropriate department of social services, community services board, local  
68 school division, court service unit and other appropriate and available public and private agencies and  
69 may be the family assessment and planning team established pursuant to § 2.2-5207. If at the end of the  
70 90-day period the juvenile has not successfully completed the truancy plan or the truancy program, then  
71 the intake officer shall file the petition.

72 Whenever informal action is taken as provided in this subsection on a complaint alleging that a child  
73 is in need of services, in need of supervision or delinquent, the intake officer shall (i) develop a plan for  
74 the juvenile, which may include restitution and the performance of community service, based upon  
75 community resources and the circumstances which resulted in the complaint, (ii) create an official record  
76 of the action taken by the intake officer and file such record in the juvenile's case file, and (iii) advise  
77 the juvenile and the juvenile's parent, guardian or other person standing in loco parentis and the  
78 complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent  
79 based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241  
80 will result in the filing of a petition with the court.

81 C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody,  
82 visitation or support of a child is the subject of controversy or requires determination, (ii) a person has  
83 deserted, abandoned or failed to provide support for any person in violation of law, (iii) a child or such  
84 child's parent, guardian, legal custodian or other person standing in loco parentis is entitled to treatment,  
85 rehabilitation or other services which are required by law, or (iv) family abuse has occurred and a  
86 protective order is being sought pursuant to §§ 16.1-253.1, 16.1-253.4 or § 16.1-279.1. If any such  
87 complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to  
88 be abused, neglected, in need of services, in need of supervision or delinquent, if the intake officer  
89 believes that probable cause does not exist, or that the authorization of a petition will not be in the best  
90 interest of the family or juvenile or that the matter may be effectively dealt with by some agency other  
91 than the court, he may refuse to authorize the filing of a petition.

92 D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall  
93 be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be  
94 in need of supervision have utilized or attempted to utilize treatment and services available in the  
95 community and have exhausted all appropriate nonjudicial remedies which are available to them. When  
96 the intake officer determines that the parties have not attempted to utilize available treatment or services  
97 or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the  
98 petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility  
99 or individual to receive treatment or services, and a petition shall not be filed. Only after the intake  
100 officer determines that the parties have made a reasonable effort to utilize available community  
101 treatment or services may he permit the petition to be filed.

102 E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an  
103 adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in  
104 writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate  
105 determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic  
106 relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake  
107 officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate  
108 finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the  
109 juvenile may be detained pursuant to the warrant issued in accordance with this subsection. If the intake  
110 officer refuses to authorize a petition relating to a child in need of services or in need of supervision, a  
111 status offense, or a misdemeanor other than Class 1, his decision is final.

112 Upon delivery to the juvenile court of a warrant issued pursuant to subdivision 2 of § 16.1-256, the  
113 intake officer shall accept and file a petition founded upon the warrant.

114 F. The intake officer shall notify the attorney for the Commonwealth of the filing of any petition  
115 which alleges facts of an offense which would be a felony if committed by an adult.

116 G. After a petition is filed alleging that a juvenile committed an act which would be a crime if  
117 committed by an adult, the intake officer shall, as soon as practicable, provide notice by telephone of  
118 the filing of the petition and the nature of the offense to the superintendent of the school division in  
119 which the petitioner alleges the juvenile is or should be enrolled, provided the violation involves:

120 1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299

121 et seq.), or 7 (§ 18.2-308 et seq.) of Chapter 7 of Title 18.2;

122 2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

123 3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of

124 Title 18.2;

125 4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

126 5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances,

127 pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

128 6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter

129 7 of Title 18.2;

130 7. Arson and related crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2;

131 8. Burglary and related offenses, pursuant to §§ 18.2-89 through 18.2-93; or

132 9. Robbery pursuant to § 18.2-58.;

133 10. *Prohibited criminal street gang activity pursuant to § 18.2-46.2; or*

134 11. *Recruitment of juveniles for criminal street gang pursuant to § 18.2-46.3.*

135 Promptly after filing a petition the intake officer shall also mail notice, by first-class mail, to the

136 superintendent. The failure to provide information regarding the school in which the juvenile who is the

137 subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

138 The information provided to a division superintendent pursuant to this section may be disclosed only

139 as provided in § 16.1-305.2.

140 H. The filing of a petition shall not be necessary:

141 1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and

142 other pedestrian offenses, game and fish laws or a violation of the ordinance of any city regulating

143 surfing or any ordinance establishing curfew violations or animal control violations. In such cases the

144 court may proceed on a summons issued by the officer investigating the violation in the same manner as

145 provided by law for adults. Additionally, an officer investigating a motor vehicle accident may, at the

146 scene of the accident or at any other location where a juvenile who is involved in such an accident may

147 be located, proceed on a summons in lieu of filing a petition.

148 2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subdivision

149 H of § 16.1-241.

150 3. In the case of a violation of § 18.2-266 or § 29.1-738, or the commission of any other

151 alcohol-related offense, provided the juvenile is released to the custody of a parent or legal guardian

152 pending the initial court date. The officer releasing a juvenile to the custody of a parent or legal

153 guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or

154 legal guardian to appear before the court with the juvenile. Disposition of the charge shall be in the

155 manner provided in § 16.1-278.8 or § 16.1-278.9. If the juvenile so charged with a violation of

156 § 18.2-266 or § 29.1-738 refuses to provide a sample of blood or breath or samples of both blood and

157 breath for chemical analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or § 29.1-738.2, the

158 provisions of these sections shall be followed except that the magistrate shall authorize execution of the

159 warrant as a summons. The summons shall be served on a parent or legal guardian and the juvenile, and

160 a copy of the summons shall be forwarded to the court in which the violation of § 18.2-266 or

161 § 29.1-738 is to be tried.

162 4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or

163 Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in

164 § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as

165 provided by law for adults provided that notice of the summons to appear is mailed by the investigating

166 officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

167 I. Failure to comply with the procedures set forth in this section shall not divest the juvenile court of

168 the jurisdiction granted it in § 16.1-241.