

041015820

HOUSE BILL NO. 1080**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee for Courts of Justice
on February 18, 2004)

(Patrons Prior to Substitute—Delegates Parrish and Albo [HB 125])

*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.***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 with compulsory school attendance as provided in § 22.1-254. The juvenile and his parent or parents, guardian or other person standing in loco parentis must agree, in writing, for the development of a truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents,

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

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

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

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

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

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

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

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

- 118 1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299
119 et seq.), or 7 (§ 18.2-308 et seq.) of Chapter 7 of Title 18.2;
- 120 2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;
- 121 3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of

122 Title 18.2;
 123 4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;
 124 5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances,
 125 pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;
 126 6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter
 127 7 of Title 18.2;
 128 7. Arson and related crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2;
 129 8. Burglary and related offenses, pursuant to §§ 18.2-89 through 18.2-93; ~~or~~
 130 9. Robbery pursuant to § 18.2-58.;

131 10. *Prohibited street gang participation pursuant to § 18.2-46.2; or*
 132 11. *Recruitment of juveniles for criminal street gang pursuant to § 18.2-46.3.*

133 Promptly after filing a petition the intake officer shall also mail notice, by first-class mail, to the
 134 superintendent. The failure to provide information regarding the school in which the juvenile who is the
 135 subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

136 The information provided to a division superintendent pursuant to this section may be disclosed only
 137 as provided in § 16.1-305.2.

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

139 1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and
 140 other pedestrian offenses, game and fish laws or a violation of the ordinance of any city regulating
 141 surfing or any ordinance establishing curfew violations or animal control violations. In such cases the
 142 court may proceed on a summons issued by the officer investigating the violation in the same manner as
 143 provided by law for adults. Additionally, an officer investigating a motor vehicle accident may, at the
 144 scene of the accident or at any other location where a juvenile who is involved in such an accident may
 145 be located, proceed on a summons in lieu of filing a petition.

146 2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subdivision
 147 H of § 16.1-241.

148 3. In the case of a violation of § 18.2-266 or § 29.1-738, or the commission of any other
 149 alcohol-related offense, provided the juvenile is released to the custody of a parent or legal guardian
 150 pending the initial court date. The officer releasing a juvenile to the custody of a parent or legal
 151 guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or
 152 legal guardian to appear before the court with the juvenile. Disposition of the charge shall be in the
 153 manner provided in § 16.1-278.8 or § 16.1-278.9. If the juvenile so charged with a violation of
 154 § 18.2-266 or § 29.1-738 refuses to provide a sample of blood or breath or samples of both blood and
 155 breath for chemical analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or § 29.1-738.2, the
 156 provisions of these sections shall be followed except that the magistrate shall authorize execution of the
 157 warrant as a summons. The summons shall be served on a parent or legal guardian and the juvenile, and
 158 a copy of the summons shall be forwarded to the court in which the violation of § 18.2-266 or
 159 § 29.1-738 is to be tried.

160 4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or
 161 Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in
 162 § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as
 163 provided by law for adults provided that notice of the summons to appear is mailed by the investigating
 164 officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

165 I. Failure to comply with the procedures set forth in this section shall not divest the juvenile court of
 166 the jurisdiction granted it in § 16.1-241.