

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 16.1-260, 19.2-83.1, and 22.1-279.3:1 of the Code of Virginia, relating*
 3 *to report of arrest of school students to school superintendent or principals for certain offenses.*

4 [S 633]

5 Approved

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

7 **1. That §§ 16.1-260, 19.2-83.1, and 22.1-279.3:1 of the Code of Virginia are amended and reenacted**
 8 **as follows:**

9 § 16.1-260. Intake; petition; investigation.

10 A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of
 11 a petition, except as provided in subsection H of this section and in § 16.1-259. The form and content of
 12 the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services
 13 from the Department of Social Services prior to filing a petition seeking support for a child. Complaints,
 14 requests and the processing of petitions to initiate a case shall be the responsibility of the intake officer.
 15 However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own
 16 motion with the clerk, (ii) the Department of Social Services may file support petitions on its own
 17 motion with the clerk, and (iii) any attorney may file petitions on behalf of his client with the clerk
 18 except petitions alleging that the subject of the petition is a child alleged to be in need of services, in
 19 need of supervision or delinquent. Complaints alleging abuse or neglect of a child shall be referred
 20 initially to the local department of social services in accordance with the provisions of Chapter 15
 21 (§ 63.2-1500 et seq.) of Title 63.2. Motions and other subsequent pleadings in a case shall be filed
 22 directly with the clerk. The intake officer or clerk with whom the petition or motion is filed shall
 23 inquire whether the petitioner is receiving child support services or public assistance. No individual who
 24 is receiving support services or public assistance shall be denied the right to file a petition or motion to
 25 establish, modify or enforce an order for support of a child. If the petitioner is seeking or receiving
 26 child support services or public assistance, the clerk, upon issuance of process, shall forward a copy of
 27 the petition or motion, together with notice of the court date, to the Division of Child Support
 28 Enforcement.

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

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

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

50 If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and
 51 the attendance officer has provided documentation to the intake officer that the relevant school division
 52 has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with the
 53 court. The intake officer may defer filing the complaint for 90 days and proceed informally by
 54 developing a truancy plan. The intake officer may proceed informally only if the juvenile has not
 55 previously been proceeded against informally or adjudicated in need of supervision for failure to comply
 56 with compulsory school attendance as provided in § 22.1-254. The juvenile and his parent or parents,

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

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

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

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

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

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

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

113 G. ~~After~~ *Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter, the intake*
 114 *officer shall file a report with the division superintendent of the school division in which any student*
 115 *who is the subject of a petition is filed* alleging that such student who is a juvenile has committed an
 116 act, *wherever committed*, which would be a crime if committed by an adult; ~~the intake officer shall, as~~
 117 ~~soon as practicable, provide notice by telephone.~~ *The report shall notify the division superintendent 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, if 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 other juveniles for a criminal street gang activity 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 *subsection 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.

169 § 19.2-83.1. Report of arrest of school employees and adult students for certain offenses.

170 A. Every state official or agency and every sheriff, police officer, or other local law-enforcement
171 officer or conservator of the peace having the power to arrest for a felony, upon arresting a person who
172 is known or discovered by the arresting official to be a full-time, part-time, permanent, or temporary
173 teacher or other employee in any public school division in this Commonwealth for a felony or a Class 1
174 misdemeanor or an equivalent offense in another state shall file a report of such arrest with the division
175 superintendent of the employing division as soon as ~~reasonably practical~~ *practicable*. The contents of the
176 report required pursuant to this section shall be utilized by the local school division solely to implement
177 the provisions of §§ ~~subsection B of § 22.1-296.2 B~~ and § 22.1-315.

178 B. Every state official or agency and every sheriff, police officer, or other local law-enforcement

179 officer or conservator of the peace having the power to arrest for a felony, shall file a report, as soon
 180 as practicable, with the division superintendent of the school division in which the student is enrolled
 181 upon arresting a person who is known or discovered by the arresting official to be a student age 18 or
 182 older in any public school division in this Commonwealth for:

183 1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299
 184 et seq.), or 7 (§ 18.2-308 et seq.) of Chapter 7 of Title 18.2;

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

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

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

189 5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances,
 190 pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

191 6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of
 192 Chapter 7 of Title 18.2;

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

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

195 9. Robbery pursuant to § 18.2-58;

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

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

198 § 22.1-279.3:1. Reports of certain acts to school authorities.

199 A. Reports shall be made to the *division superintendent and to the principal* or his designee on all
 200 incidents involving (i) the assault or assault and battery, without bodily injury, of any person on a
 201 school bus, on school property, or at a school-sponsored activity; (ii) the assault and battery which
 202 results in bodily injury, sexual assault, death, shooting, stabbing, cutting, or wounding of any person on
 203 a school bus, on school property, or at a school-sponsored activity; (iii) any conduct involving alcohol,
 204 marijuana, a controlled substance, imitation controlled substance, or an anabolic steroid on a school bus,
 205 on school property, or at a school-sponsored activity, including the theft or attempted theft of student
 206 prescription medications; (iv) any threats against school personnel while on a school bus, on school
 207 property or at a school-sponsored activity; (v) the illegal carrying of a firearm onto school property; (vi)
 208 any illegal conduct involving firebombs, explosive materials or devices, or hoax explosive devices, as
 209 defined in § 18.2-85, or explosive or incendiary devices, as defined in § 18.2-433.1, or chemical bombs,
 210 as described in § 18.2-87.1, on a school bus, on school property, or at a school-sponsored activity; ~~or~~
 211 (vii) any threats or false threats to bomb, as described in § 18.2-83, made against school personnel or
 212 involving school property or school buses; *or (viii) the arrest of any student for an incident occurring*
 213 *on a school bus, on school property, or at a school-sponsored activity, including the charge therefor.*

214 B. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of Chapter 11 of Title 16.1,
 215 local law-enforcement authorities ~~may~~ shall report, and the principal or his designee ~~may~~ and the
 216 *division superintendent shall* receive such reports, on offenses, wherever committed, by students enrolled
 217 at the school if the offense would be a felony if committed by an adult or would be a violation of the
 218 Drug Control Act (§ 54.1-3400 et seq.) and occurred on a school bus, on school property, or at a
 219 school-sponsored activity, or would be an adult misdemeanor involving any incidents described in
 220 clauses (i) through ~~(v)~~ (viii) of subsection A.

221 C. The principal or his designee shall submit a report of all incidents required ~~or~~ authorized to be
 222 reported pursuant to this section to the superintendent of the school division. The division superintendent
 223 shall annually report all such incidents to the Department of Education for the purpose of recording the
 224 frequency of such incidents on forms that shall be provided by the Department and shall make such
 225 information available to the public. A division superintendent who knowingly fails to comply or secure
 226 compliance with the reporting requirements of this subsection shall be subject to the sanctions authorized
 227 in § 22.1-65. A principal who knowingly fails to comply or secure compliance with the reporting
 228 requirements of this section shall be subject to sanctions prescribed by the local school board, which
 229 may include, but need not be limited to, demotion or dismissal.

230 The principal or his designee shall also notify the parent of any student involved in an incident
 231 required by subsection A ~~or~~ authorized by subsection B pursuant to this section to be reported,
 232 regardless of whether disciplinary action is taken against such student or the nature of the disciplinary
 233 action. Such notice shall relate to only the relevant student's involvement and shall not include
 234 information concerning other students.

235 Whenever any student commits any reportable incident as set forth in this section, such student shall
 236 be required to participate in such prevention and intervention activities as deemed appropriate by the
 237 superintendent or his designee. Prevention and intervention activities shall be identified in the local
 238 school division's drug and violence prevention plans developed pursuant to the federal Improving
 239 America's Schools Act of 1994 (Title IV - Safe and Drug-Free Schools and Communities Act).

240 D. Except as may otherwise be required by federal law, regulation, or jurisprudence, the principal
241 shall immediately report to the local law-enforcement agency any act enumerated in clauses (ii) through
242 (vii) of subsection A that may constitute a criminal offense and may report to the local law-enforcement
243 agency any incident described in clause (i) of subsection A.

244 E. A statement providing a procedure and the purpose for the requirements of this section shall be
245 included in the policy manual of all school divisions.

246 The Board of Education shall promulgate regulations to implement this section, including, but not
247 limited to, establishing reporting dates and report formats.

248 F. For the purposes of this section, "parent" or "parents" means any parent, guardian or other person
249 having control or charge of a child.

250 G. This section shall not be construed to diminish the authority of the Board of Education or to
251 diminish the Governor's authority to coordinate and provide policy direction on official communications
252 between the Commonwealth and the United States government.