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HOUSE BILL NO. 1046

Offered January 11, 2006

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A BILL to amend and reenact § 16.1-260 of the Code of Virginia, relating to reporting alleged juvenile illegal alien delinquents to the Immigration and Customs Enforcement Agency.

Patrons—Reid, Albo, Athey, Cosgrove, Frederick, Gear, Gilbert, Hargrove, Hugo, Jones, S.C., Landes and Lohr

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 delinquent for an offense that would be a felony if committed by an adult. A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is delinquent for an offense that would be a felony if committed by an adult shall be filed with the court if the juvenile had previously been proceeded against informally by intake or had been adjudicated 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

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

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

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

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

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

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

118 *E1. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter, the intake*
119 *officer shall report to the United States Immigration and Customs Enforcement Agency a juvenile who is*

the subject of a petition alleging he committed an act that would be a crime if committed by an adult and who has also been found to be in the United States illegally. The report shall include the nature of the offense alleged to have been committed.

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

G. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter, the intake officer shall file a report with the division superintendent of the school division in which any student who is the subject of a petition alleging that such student who is a juvenile has committed an act, wherever committed, which would be a crime if committed by an adult. The report shall notify the division superintendent of the filing of the petition and the nature of the offense, if the violation involves:

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

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

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

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

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

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

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

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

9. Robbery pursuant to § 18.2-58;

10. Prohibited street gang participation pursuant to § 18.2-46.2;

11. Prohibited criminal street gang activity pursuant to § 18.2-46.2;

12. Recruitment of other juveniles for a criminal street gang activity pursuant to § 18.2-46.3; or

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

The failure to provide information regarding the school in which the juvenile who is the subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

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

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

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

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

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

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

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