

2008 SESSION

LEGISLATION NOT PREPARED BY DLS
ENGROSSED

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SENATE BILL NO. 788

Senate Amendments in [] - February 8, 2008

A BILL to amend and reenact §§ 8.01-271.1, 16.1-260, 16.1-278.15, 54.1-3900 and 63.2-1901 of the Code of Virginia, relating to nonattorney employees of the Department of Social Services.

Patron Prior to Engrossment—Senator Quayle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-271.1, 16.1-260, 16.1-278.15, 54.1-3900 and 63.2-1901 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-271.1. Signing of pleadings, motions, and other papers; oral motions; sanctions.

~~Every~~ Except as otherwise provided in §§ 16.1-260 and 63.2-1901, every pleading, written motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, and the attorney's address shall be stated on the first pleading filed by that attorney in the action. A party who is not represented by an attorney, including a person confined in a state or local correctional facility proceeding pro se, shall sign his pleading, motion, or other paper and state his address.

The signature of an attorney or party constitutes a certificate by him that (i) he has read the pleading, motion, or other paper, (ii) to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, written motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

An oral motion made by an attorney or party in any court of the Commonwealth constitutes a representation by him that (i) to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and (ii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

If a pleading, motion, or other paper is signed or made in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed the paper or made the motion, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper or making of the motion, including a reasonable attorney's fee.

§ 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) [*designated*] *nonattorney employees of the Department of Social Services may file support complete, sign and file petitions on its own motion and motions[relating to the establishment, modification, or enforcement of support] [on forms approved by the Supreme Court of Virginia]* 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. [*This subsection is declarative of existing law.*]

B. The appearance of a child before an intake officer may be by (i) personal appearance before the

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

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

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

81 If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and
82 the attendance officer has provided documentation to the intake officer that the relevant school division
83 has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with the
84 court. The intake officer may defer filing the complaint for 90 days and proceed informally by
85 developing a truancy plan. The intake officer may proceed informally only if the juvenile has not
86 previously been proceeded against informally or adjudicated in need of supervision for failure to comply
87 with compulsory school attendance as provided in § 22.1-254. The juvenile and his parent or parents,
88 guardian or other person standing in loco parentis must agree, in writing, for the development of a
89 truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents,
90 guardian or other person standing in loco parentis participate in such programs, cooperate in such
91 treatment or be subject to such conditions and limitations as necessary to ensure the juvenile's
92 compliance with compulsory school attendance as provided in § 22.1-254. The intake officer may refer
93 the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an
94 interagency interdisciplinary team approach. The team may include qualified personnel who are
95 reasonably available from the appropriate department of social services, community services board, local
96 school division, court service unit and other appropriate and available public and private agencies and
97 may be the family assessment and planning team established pursuant to § 2.2-5207. If at the end of the
98 90-day period the juvenile has not successfully completed the truancy plan or the truancy program, then
99 the intake officer shall file the petition.

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

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

pursuant to §§ 16.1-253.1, 16.1-253.4 or § 16.1-279.1.

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

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

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

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 § 18.2-51.4, 18.2-266, 18.2-266.1, 18.2-272, 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 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.

§ 16.1-278.15. Custody or visitation, child or spousal support generally.

A. In cases involving the custody, visitation or support of a child pursuant to subdivision A 3 of § 16.1-241, the court may make any order of disposition to protect the welfare of the child and family as may be made by the circuit court. The parties to any petition where a child whose custody, visitation, or support is contested shall show proof that they have attended within the 12 months prior to their court appearance or that they shall attend within 45 days thereafter an educational seminar or other like program conducted by a qualified person or organization approved by the court. The court may require the parties to attend such seminar or program in uncontested cases only if the court finds good cause. The seminar or other program shall be a minimum of four hours in length and shall address the effects of separation or divorce on children, parenting responsibilities, options for conflict resolution and financial responsibilities. Once a party has completed one educational seminar or other like program, the required completion of additional programs shall be at the court's discretion. Parties under this section shall include natural or adoptive parents of the child, or any person with a legitimate interest as defined in § 20-124.1. The fee charged a party for participation in such program shall be based on the party's ability to pay; however, no fee in excess of \$50 may be charged. Whenever possible, before participating in mediation or alternative dispute resolution to address custody, visitation or support, each party shall have attended the educational seminar or other like program. The court may grant an exemption from attendance of such program for good cause shown or if there is no program reasonably available. Other than statements or admissions by a party admitting criminal activity or child abuse or neglect, no statement or admission by a party in such seminar or program shall be admissible into evidence in any subsequent proceeding. If support is ordered for a child, the order shall also provide that support will continue to be paid for a child over the age of 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent seeking or receiving child support, until the child reaches the age of 19 or graduates from high school, whichever occurs first. The court may also order the continuation of support for any child over the age of 18 who is (a) severely and permanently mentally or physically disabled, (b) unable to live independently and support himself, and (c) resides in the home of the parent seeking or receiving child support.

B. In any case involving the custody or visitation of a child, the court may award custody upon petition to any party with a legitimate interest therein, including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family members. The term "legitimate interest" shall be broadly construed to accommodate the best interest of the child. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the custody of the child has previously been awarded to a local board of social services.

C. In any determination of support obligation under this section, the support obligation as it becomes due and unpaid creates a judgment by operation of law. Such judgment becomes a lien against real estate only when docketed in the county or city where such real estate is located. Nothing herein shall be construed to alter or amend the process of attachment of any lien on personal property.

D. Orders entered prior to July 1, 2008, shall not be deemed void or voidable solely because the petition or motion that resulted in the order was completed, signed and filed by a nonattorney employee of the Department of Social Services.

E. In cases involving charges for desertion, abandonment or failure to provide support by any person in violation of law, disposition shall be made in accordance with Chapter 5 (§ 20-61 et seq.) of Title 20.

~~E~~ F. In cases involving a spouse who seeks spousal support after having separated from his spouse,

the court may enter any appropriate order to protect the welfare of the spouse seeking support.

¶ G. In any case or proceeding involving the custody or visitation of a child, the court shall consider the best interest of the child, including the considerations for determining custody and visitation set forth in Chapter 6.1 (§ 20-124.1 et seq.) of Title 20.

¶ H. In any proceeding before the court for custody or visitation of a child, the court may order a custody or a psychological evaluation of any parent, guardian, legal custodian or person standing in loco parentis to the child, if the court finds such evaluation would assist it in its determination. The court may enter such orders as it deems appropriate for the payment of the costs of the evaluation by the parties.

¶ I. When deemed appropriate by the court in any custody or visitation matter, the court may order drug testing of any parent, guardian, legal custodian or person standing in loco parentis to the child. The court may enter such orders as it deems appropriate for the payment of the costs of the testing by the parties.

§ 54.1-3900. Practice of law; student internship program; definition.

Persons who hold a license or certificate to practice law under the laws of this Commonwealth and have paid the license tax prescribed by law may practice law in the Commonwealth.

Any person authorized and practicing as counsel or attorney in any state or territory of the United States, or in the District of Columbia, may for the purpose of attending to any case he may occasionally have in association with a practicing attorney of this Commonwealth practice in the courts of this Commonwealth, in which case no license fee shall be chargeable against such nonresident attorney.

Nothing herein shall prohibit the limited practice of law by military legal assistance attorneys who are employed by a military program providing legal services to low-income military clients and their dependents pursuant to rules promulgated by the Supreme Court of Virginia.

Nothing herein shall prohibit a limited practice of law under the supervision of a practicing attorney by (i) third-year law students or (ii) persons who are in the final year of a program of study as authorized in § 54.1-3926, pursuant to rules promulgated by the Supreme Court of Virginia.

~~Further, nothing~~ *Nothing* herein shall prohibit an employee of a state agency in the course of his employment from representing the interests of his agency in administrative hearings before any state agency, such representation to be limited to the examination of witnesses at administrative hearings relating to personnel matters and the adoption of agency standards, policies, rules and regulations.

Nothing herein shall prohibit [designated] nonattorney employees of the Department of Social Services from completing, signing and filing petitions and motions [relating to the establishment, modification, or enforcement of support] on forms approved by the Supreme Court of Virginia in Department cases in the juvenile and domestic relations district courts. [This statute is declarative of existing law.]

As used in this chapter "attorney" means attorney-at-law.

§ 63.2-1901. Purpose of chapter; powers and duties of the Department.

It is the purpose of this chapter to promote the efficient and accurate collection, accounting and receipt of support for financially dependent children and their custodians, and to further the effective and timely enforcement of such support while ensuring that all functions in the Department are appropriate or necessary to comply with applicable federal law.

Nonattorney employees of the Department are authorized to complete, sign and file petitions and motions on forms approved by the Supreme Court of Virginia relating to the establishment, modification, and enforcement of support in Department cases in the juvenile and domestic relations district courts. Orders entered prior to July 1, 2008, shall not be deemed void or voidable solely because such petitions and motions were signed by nonattorney employees.

When so ordered by the court or the Department, support for financially dependent children and their custodians shall be paid by obligors to the Department's State Disbursement Unit (SDU) or in district offices located within the Commonwealth for processing by the SDU. The Department shall have authority to enter into contracts with any appropriate public or private entities to enforce, collect, account for and disburse payments for child or spousal support.

The Division of Child Support Enforcement within the Department shall be authorized to issue payments to implement the disbursement of funds pursuant to the provisions of this section.