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HOUSE BILL NO. 682

Offered January 11, 2012

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A BILL to amend and reenact §§ 16.1-260, 16.1-305, and 16.1-306 of the Code of Virginia, relating to petitions for child custody or visitation.

Patron—Surovell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-260, 16.1-305, and 16.1-306 of the Code of Virginia are 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) designated nonattorney employees of the Department of Social Services may complete, sign and file petitions 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.

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 for an offense that would be a felony if committed by an adult.

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

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59 court. The intake officer may defer filing the complaint for 90 days and proceed informally by
60 developing a truancy plan. The intake officer may proceed informally only if the juvenile has not
61 previously been proceeded against informally or adjudicated in need of supervision for failure to comply
62 with compulsory school attendance as provided in § 22.1-254. The juvenile and his parent or parents,
63 guardian or other person standing in loco parentis must agree, in writing, for the development of a
64 truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents,
65 guardian or other person standing in loco parentis participate in such programs, cooperate in such
66 treatment or be subject to such conditions and limitations as necessary to ensure the juvenile's
67 compliance with compulsory school attendance as provided in § 22.1-254. The intake officer may refer
68 the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an
69 interagency interdisciplinary team approach. The team may include qualified personnel who are
70 reasonably available from the appropriate department of social services, community services board, local
71 school division, court service unit and other appropriate and available public and private agencies and
72 may be the family assessment and planning team established pursuant to § 2.2-5207. If at the end of the
73 90-day period the juvenile has not successfully completed the truancy plan or the truancy program, then
74 the intake officer shall file the petition.

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

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

98 *A single petition may be filed with regard to any or all custody or visitation issues for a child, and a*
99 *single petition may be filed with regard to such issues for two or more children if such children have*
100 *the same parents or legal guardians.*

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

111 E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an
112 adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in
113 writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate
114 determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic
115 relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake
116 officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate
117 finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the
118 juvenile may be detained pursuant to the warrant issued in accordance with this subsection. If the intake
119 officer refuses to authorize a petition relating to a child in need of services or in need of supervision, a
120 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, or that such student who is an adult has committed a crime and is alleged to be within the jurisdiction of the court. 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 or synthetic cannabinoids 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 criminal street gang activity pursuant to § 18.2-46.2;

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

12. An act of violence by a mob pursuant to § 18.2-42.1.

The failure to provide information regarding the school in which the student 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 misdemeanor violation of § 18.2-250.1, 18.2-266, 18.2-266.1, 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, 16.1-278.8:01, 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. When a violation of § 18.2-250.1 is charged by summons, the juvenile shall be entitled to have the charge referred to intake for consideration of informal proceedings pursuant to subsection B, provided such right is exercised by written notification to the clerk not later than 10 days prior to trial. At the time such summons alleging a violation of § 18.2-250.1 is served, the officer shall also serve upon the juvenile written notice of the right to have the charge referred to intake on a form approved by the Supreme Court and make return of such service to the court. If the officer fails to make such service or return, the court shall dismiss the summons without prejudice.

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

182 Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in
183 § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as
184 provided by law for adults provided that notice of the summons to appear is mailed by the investigating
185 officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

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

188 § 16.1-305. Confidentiality of court records.

189 A. Social, medical and psychiatric or psychological records, including reports or preliminary
190 inquiries, predisposition studies and supervision records, of neglected and abused children, children in
191 need of services, children in need of supervision and delinquent children shall be filed with the other
192 papers in the juvenile's case file. All juvenile case files shall be filed separately from adult files and
193 records of the court and shall be open for inspection only to the following:

194 1. The judge, probation officers and professional staff assigned to serve the juvenile and domestic
195 relations district courts;

196 2. Representatives of a public or private agency or department providing supervision or having legal
197 custody of the child or furnishing evaluation or treatment of the child ordered or requested by the court;

198 3. The attorney for any party, including the attorney for the Commonwealth;

199 4. Any other person, agency or institution, by order of the court, having a legitimate interest in the
200 case or in the work of the court. However, for the purposes of an investigation conducted by a local
201 community-based probation services agency, preparation of a pretrial investigation report, or of a
202 presentence or postsentence report upon a finding of guilty in a circuit court or for the preparation of a
203 background report for the Parole Board, adult probation and parole officers, including United States
204 Probation and Pretrial Services Officers, any officer of a local pretrial services agency established or
205 operated pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2, and any officer of a
206 local community-based probation services agency established or operated pursuant to the Comprehensive
207 Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) shall have access to an
208 accused's or inmate's records in juvenile court without a court order and for the purpose of preparing the
209 discretionary sentencing guidelines worksheets and related risk assessment instruments as directed by the
210 court pursuant to subsection C of § 19.2-298.01, the attorney for the Commonwealth and any pretrial
211 services or probation officer shall have access to the defendant's records in juvenile court without a
212 court order;

213 5. Any attorney for the Commonwealth and any local pretrial services or community-based probation
214 officer or state adult probation or parole officer shall have direct access to the defendant's juvenile court
215 delinquency records maintained in an electronic format by the court for the strictly limited purposes of
216 preparing a pretrial investigation report, including any related risk assessment instrument, any
217 presentence report, any discretionary sentencing guidelines worksheets, including related risk assessment
218 instruments, any post-sentence investigation report or preparing for any transfer or sentencing hearing.

219 A copy of the court order of disposition in a delinquency case shall be provided to a probation
220 officer or attorney for the Commonwealth, when requested for the purpose of calculating sentencing
221 guidelines. The copies shall remain confidential, but reports may be prepared using the information
222 contained therein as provided in §§ 19.2-298.01 and 19.2-299.

223 6. The Office of the Attorney General, for all criminal justice activities otherwise permitted and for
224 purposes of performing duties required by Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

225 A1. Any person, agency, or institution that may inspect juvenile case files pursuant to subdivisions A
226 1 through A 4 shall be authorized to have copies made of such records, subject to any restrictions,
227 conditions, or prohibitions that the court may impose.

228 A2. *In any case where a single petition with regard to any or all custody or visitation issues for two*
229 *or more juveniles was filed in accordance with subsection C of § 16.1-260, any person, agency, or*
230 *institution that may inspect juvenile case files pursuant to subsection A for any of the juveniles subject*
231 *to the petition is authorized to inspect the entire case file related to the petition.*

232 B. All or any part of the records enumerated in subsection A, or information secured from such
233 records, which is presented to the judge in court or otherwise in a proceeding under this law shall also
234 be made available to the parties to the proceedings and their attorneys.

235 B1. If a juvenile 14 years of age or older at the time of the offense is adjudicated delinquent on the
236 basis of an act which would be a felony if committed by an adult, all court records regarding that
237 adjudication and any subsequent adjudication of delinquency, other than those records specified in
238 subsection A, shall be open to the public. However, if a hearing was closed, the judge may order that
239 certain records or portions thereof remain confidential to the extent necessary to protect any juvenile
240 victim or juvenile witness.

241 C. All other juvenile records, including the docket, petitions, motions and other papers filed with a
242 case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection only by
243 those persons and agencies designated in subsections A and B of this section. However, a licensed bail

bondsman shall be entitled to know the status of a bond he has posted or provided surety on for a juvenile under § 16.1-258. This shall not authorize a bail bondsman to have access to or inspect any other portion of his principal's juvenile court records.

D. Attested copies of papers filed in connection with an adjudication of guilty for an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles, which shows the charge, finding, disposition, name of the attorney for the juvenile, or waiver of attorney shall be furnished to an attorney for the Commonwealth upon certification by the prosecuting attorney that such papers are needed as evidence in a pending criminal, traffic, or habitual offender proceeding and that such papers will be only used for such evidentiary purpose.

D1. Attested copies of papers filed in connection with an adjudication of guilt for a delinquent act that would be a felony if committed by an adult, which show the charge, finding, disposition, name of the attorney for the juvenile, or waiver of attorney by the juvenile, shall be furnished to an attorney for the Commonwealth upon his certification that such papers are needed as evidence in a pending criminal prosecution for a violation of § 18.2-308.2 and that such papers will be only used for such evidentiary purpose.

E. Upon request, a copy of the court order of disposition in a delinquency case shall be provided to the Virginia Workers' Compensation Commission solely for purposes of determining whether to make an award to the victim of a crime, and such information shall not be disseminated or used by the Commission for any other purpose including but not limited to actions pursuant to § 19.2-368.15.

F. Staff of the court services unit or the attorney for the Commonwealth shall provide notice of the disposition in a case involving a juvenile who is committed to state care after being adjudicated for a criminal sexual assault as specified in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 to the victim or a parent of a minor victim, upon request. Additionally, if the victim or parent submits a written request, the Department of Juvenile Justice shall provide advance notice of such juvenile offender's anticipated date of release from commitment.

G. Any record in a juvenile case file which is open for inspection by the professional staff of the Department of Juvenile Justice pursuant to subsection A and is maintained in an electronic format by the court, may be transmitted electronically to the Department of Juvenile Justice. Any record so transmitted shall be subject to the provisions of § 16.1-300.

§ 16.1-306. Expungement of court records.

A. Notwithstanding the provisions of § 16.1-69.55, the clerk of the juvenile and domestic relations district court shall, on January 2 of each year or on a date designated by the court, destroy its files, papers and records, including electronic records, connected with any proceeding concerning a juvenile in such court, if such juvenile has attained the age of 19 years and five years have elapsed since the date of the last hearing in any case of the juvenile which is subject to this section, *except that in any case where a single petition with regard to any or all custody or visitation issues for two or more juveniles was filed in accordance with subsection C of § 16.1-260, such files, papers and records, including electronic records, shall be destroyed when the youngest of the juveniles subject to the petition has attained the age of 19 years and five years have elapsed since the date of the last hearing.* However, if the juvenile was found guilty of an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles, the records shall be destroyed when the juvenile has attained the age of 29. If the juvenile was found guilty of a delinquent act which would be a felony if committed by an adult, the records shall be retained.

B. In all files in which the court records concerning a juvenile contain a finding of guilty of a delinquent act which would be a felony if committed by an adult or an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles together with findings of not innocent of other acts, all of the records of such juvenile subject to this section shall be retained and available for inspection as provided in § 16.1-305.

C. A person who has been the subject of a delinquency or traffic proceeding and (i) has been found innocent thereof or (ii) such proceeding was otherwise dismissed, may file a motion requesting the destruction of all records pertaining to the charge of such an act of delinquency. Notice of such motion shall be given to the attorney for the Commonwealth. Unless good cause is shown why such records should not be destroyed, the court shall grant the motion, and shall send copies of the order to all officers or agencies that are repositories of such records, and all such officers and agencies shall comply with the order.

D. Each person shall be notified of his rights under subsections A and C of this section at the time of his dispositional hearing.

E. Upon destruction of the records of a proceeding as provided in subsections A, B, and C, the violation of law shall be treated as if it never occurred. All index references shall be deleted and the court and law-enforcement officers and agencies shall reply and the person may reply to any inquiry that no record exists with respect to such person.

305 F. All docket sheets shall be destroyed in the sixth year after the last hearing date recorded on the
306 docket sheet.