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SENATE BILL NO. 1194

Offered January 9, 2013

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A BILL to amend and reenact §§ 16.1-260 and 22.1-258 of the Code of Virginia, relating to juvenile alleged to be truant; development of truancy plan.

Patrons—Alexander; Delegate: Spruill

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-260 and 22.1-258 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 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 court determine whether the juvenile has previously been proceeded against informally or adjudicated in need

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59 of supervision for failure to comply with compulsory school attendance as provided in § 22.1-254. ~~The If~~
60 ~~the juvenile has previously been proceeded against informally or adjudicated in need of supervision for~~
61 ~~failure to comply with compulsory school attendance laws, then the intake officer shall file a petition~~
62 ~~with the court.~~

63 *If the juvenile has not previously been proceeded against informally or adjudicated in need of*
64 *supervision for failure to comply with compulsory school attendance laws, the intake officer may shall*
65 *defer filing the complaint for 90 days and proceed informally by developing a truancy plan. The intake*
66 *officer may proceed informally only if the juvenile has not previously been proceeded against informally*
67 *or adjudicated in need of supervision for failure to comply with compulsory school attendance as*
68 *provided in § 22.1-254. The juvenile and his parent or parents, guardian or other person standing in loco*
69 *parentis must agree, in writing, for the development of a truancy plan. The truancy plan may include*
70 *requirements that the juvenile and his parent or parents, guardian or other person standing in loco*
71 *parentis participate in such programs, cooperate in such treatment or be subject to such conditions and*
72 *limitations as necessary to ensure the juvenile's compliance with compulsory school attendance as*
73 *provided in § 22.1-254. The intake officer may shall refer the juvenile to the appropriate public agency*
74 *for the purpose of developing a truancy plan using an interagency interdisciplinary team approach. The*
75 *team may include qualified personnel who are reasonably available from the appropriate department of*
76 *social services, community services board, local school division, court service unit and other appropriate*
77 *and available public and private agencies and may be the family assessment and planning team*
78 *established pursuant to § 2.2-5207. The team shall identify factors contributing to the child's*
79 *nonattendance and specific services necessary to address those factors and develop a plan for how*
80 *necessary services will be delivered, including sources of funding that may be available for the*
81 *provision of necessary services. The plan shall also identify specific outcomes for the child and*
82 *measures by which his process will be evaluated. The plan may include a requirement that the child or*
83 *his parent or parents , guardian, or person standing in loco parentis participate in such services or*
84 *programs, cooperate with such treatment, or be subject to such conditions and limitations as may be*
85 *necessary to ensure the juvenile's compliance with compulsory school attendance as provided in*
86 *§ 22.1-254. If at the end of the 90-day period, the juvenile has not successfully completed the truancy*
87 *plan or the truancy program, then the intake officer shall file the petition.*

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

97 C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody,
98 visitation or support of a child is the subject of controversy or requires determination, (ii) a person has
99 deserted, abandoned or failed to provide support for any person in violation of law, (iii) a child or such
100 child's parent, guardian, legal custodian or other person standing in loco parentis is entitled to treatment,
101 rehabilitation or other services which are required by law, (iv) family abuse has occurred and a
102 protective order is being sought pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1, or (v) an act of
103 violence, force, or threat has occurred, a protective order is being sought pursuant to § 19.2-152.8,
104 19.2-152.9, or 19.2-152.10, and either the alleged victim or the respondent is a juvenile. If any such
105 complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to
106 be abused, neglected, in need of services, in need of supervision or delinquent, if the intake officer
107 believes that probable cause does not exist, or that the authorization of a petition will not be in the best
108 interest of the family or juvenile or that the matter may be effectively dealt with by some agency other
109 than the court, he may refuse to authorize the filing of a petition. The intake officer shall provide to a
110 person seeking a protective order pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1 a written
111 explanation of the conditions, procedures and time limits applicable to the issuance of protective orders
112 pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1. If the person is seeking a protective order pursuant
113 to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, the intake officer shall provide a written explanation of the
114 conditions, procedures, and time limits applicable to the issuance of protective orders pursuant to
115 § 19.2-152.8, 19.2-152.9, or 19.2-152.10.

116 D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall
117 be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be
118 in need of supervision have utilized or attempted to utilize treatment and services available in the
119 community and have exhausted all appropriate nonjudicial remedies which are available to them. When
120 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.), 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

182 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
183 sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to
184 §§ 18.2-268.1 through 18.2-268.12 or 29.1-738.2, the provisions of these sections shall be followed
185 except that the magistrate shall authorize execution of the warrant as a summons. The summons shall be
186 served on a parent or legal guardian and the juvenile, and a copy of the summons shall be forwarded to
187 the court in which the violation is to be tried. When a violation of § 18.2-250.1 is charged by summons,
188 the juvenile shall be entitled to have the charge referred to intake for consideration of informal
189 proceedings pursuant to subsection B, provided such right is exercised by written notification to the
190 clerk not later than 10 days prior to trial. At the time such summons alleging a violation of § 18.2-250.1
191 is served, the officer shall also serve upon the juvenile written notice of the right to have the charge
192 referred to intake on a form approved by the Supreme Court and make return of such service to the
193 court. If the officer fails to make such service or return, the court shall dismiss the summons without
194 prejudice.

195 4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or
196 Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in
197 § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as
198 provided by law for adults provided that notice of the summons to appear is mailed by the investigating
199 officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

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

202 **§ 22.1-258. Appointment of attendance officers; notification when pupil fails to report to school.**

203 Every school board shall have power to appoint one or more attendance officers, who shall be
204 charged with the enforcement of the provisions of this article. Where no attendance officer is appointed
205 by the school board, the division superintendent or his designee shall act as attendance officer.

206 Whenever any pupil fails to report to school on a regularly scheduled school day and no indication
207 has been received by school personnel that the pupil's parent is aware of and supports the pupil's
208 absence, a reasonable effort to notify by telephone the parent to obtain an explanation for the pupil's
209 absence shall be made by either the school principal or his designee, the attendance officer, other school
210 personnel, or volunteers organized by the school administration for this purpose. Any such volunteers
211 shall not be liable for any civil damages for any acts or omissions resulting from making such
212 reasonable efforts to notify parents and obtain such explanation when such acts or omissions are taken
213 in good faith, unless such acts or omissions were the result of gross negligence or willful misconduct.
214 This subsection shall not be construed to limit, withdraw, or overturn any defense or immunity already
215 existing in statutory or common law or to affect any claim occurring prior to the effective date of this
216 law. School divisions are encouraged to use noninstructional personnel for this notice.

217 Whenever any pupil fails to report to school for a total of five scheduled school days for the school
218 year and no indication has been received by school personnel that the pupil's parent is aware of and
219 supports the pupil's absence, and a reasonable effort to notify the parent has failed, the school principal
220 or his designee or the attendance officer shall make a reasonable effort to ensure that direct contact is
221 made with the parent, either in person or through telephone conversation, to obtain an explanation for
222 the pupil's absence and to explain to the parent the consequences of continued nonattendance. The
223 school principal or his designee or the attendance officer, the pupil, and the pupil's parent shall jointly
224 develop a plan to resolve the pupil's nonattendance. Such plan shall include documentation of the
225 reasons for the pupil's nonattendance.

226 If the pupil is absent an additional day after direct contact with the pupil's parent and the attendance
227 officer has received no indication that the pupil's parent is aware of and supports the pupil's absence,
228 either the school principal or his designee or the attendance officer shall ~~schedule a conference within~~
229 ~~10 school days with the pupil, his parent, and school personnel, which conference may include other~~
230 ~~community service providers, refer the pupil to a school-based multidisciplinary team for assessment~~
231 ~~and the development of a truancy plan to resolve issues related to the pupil's nonattendance. The~~
232 ~~multidisciplinary team shall include the school principal and may include a school administrator, school~~
233 ~~counselor, social worker or psychologist, special education or regular education teacher, attendance~~
234 ~~officer, and any other relevant community service provider, and may be the family assessment and~~
235 ~~planning team established pursuant to § 2.2-5207. The team shall work together with the pupil and his~~
236 ~~parent, guardian, or person standing in loco parentis to identify factors contributing to the child's~~
237 ~~nonattendance and specific services necessary to address those factors and develop a plan for how~~
238 ~~necessary services will be delivered, including sources of funding that may be available for the~~
239 ~~provision of necessary services. The plan shall also identify specific outcomes for the child and~~
240 ~~measures by which his process will be evaluated. The conference truancy assessment and plan shall be~~
241 ~~held completed no later than 15 school days after the sixth absence.~~

242 Upon the next absence by such pupil without indication to the attendance officer that the pupil's
243 parent is aware of and supports the pupil's absence a determination by the school principal or his

244 *designee that the pupil has failed to make satisfactory progress toward the outcomes identified in the*
245 *truancy plan*, the school principal or his designee shall notify the attendance officer or the division
246 superintendent or his designee, as the case may be, who shall enforce the provisions of this article by
247 either or both of the following: (i) filing a complaint with the juvenile and domestic relations court
248 alleging the pupil is a child in need of supervision as defined in § 16.1-228 or (ii) instituting
249 proceedings against the parent pursuant to § 18.2-371 or § 22.1-262. In filing a complaint against the
250 student, the attendance officer shall provide written documentation of the efforts to comply with the
251 provisions of this section. In the event that both parents have been awarded joint physical custody
252 pursuant to § 20-124.2 and the school has received notice of such order, both parents shall be notified at
253 the last known addresses of the parents.

254 Nothing in this section shall be construed to limit in any way the authority of any attendance officer
255 or division superintendent to seek immediate compliance with the compulsory school attendance law as
256 set forth in this article.

257 Attendance officers, other school personnel or volunteers organized by the school administration for
258 this purpose shall be immune from any civil or criminal liability in connection with the notice to parents
259 of a pupil's absence or failure to give such notice as required by this section.