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SENATE BILL NO. 417

Offered January 13, 2016

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A BILL to amend and reenact §§ 16.1-260, 54.1-3900, and 63.2-332 of the Code of Virginia, relating to Department of Social Services; unauthorized practice of law.

 Patron—Vogel

 Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-260, 54.1-3900, and 63.2-332 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 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) *designated nonattorney employees of a local department of social services may complete, sign, and file with the clerk, on forms approved by the Supreme Court of Virginia, petitions for foster care review, petitions for permanency planning hearings, petitions to establish paternity, motions to establish or modify support, motions to amend or review an order, and motions for a rule to show cause; and* (iv) 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

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

60 If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and
61 the attendance officer has provided documentation to the intake officer that the relevant school division
62 has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with the
63 court. The intake officer may defer filing the complaint for 90 days and proceed informally by
64 developing a truancy plan. The intake officer may proceed informally only if the juvenile has not
65 previously been proceeded against informally or adjudicated in need of supervision for failure to comply
66 with compulsory school attendance as provided in § 22.1-254. The juvenile and his parent or parents,
67 guardian, or other person standing in loco parentis must agree, in writing, for the development of a
68 truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents,
69 guardian, or other person standing in loco parentis participate in such programs, cooperate in such
70 treatment, or be subject to such conditions and limitations as necessary to ensure the juvenile's
71 compliance with compulsory school attendance as provided in § 22.1-254. The intake officer may refer
72 the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an
73 interagency interdisciplinary team approach. The team may include qualified personnel who are
74 reasonably available from the appropriate department of social services, community services board, local
75 school division, court service unit, and other appropriate and available public and private agencies and
76 may be the family assessment and planning team established pursuant to § 2.2-5207. If at the end of the
77 90-day period the juvenile has not successfully completed the truancy plan or the truancy program, then
78 the intake officer shall file the petition.

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

88 C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody,
89 visitation, or support of a child is the subject of controversy or requires determination, (ii) a person has
90 deserted, abandoned, or failed to provide support for any person in violation of law, (iii) a child or such
91 child's parent, guardian, legal custodian, or other person standing in loco parentis is entitled to treatment,
92 rehabilitation, or other services which are required by law, (iv) family abuse has occurred and a
93 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
94 violence, force, or threat has occurred, a protective order is being sought pursuant to § 19.2-152.8,
95 19.2-152.9, or 19.2-152.10, and either the alleged victim or the respondent is a juvenile. If any such
96 complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to
97 be abused, neglected, in need of services, in need of supervision, or delinquent, if the intake officer
98 believes that probable cause does not exist, or that the authorization of a petition will not be in the best
99 interest of the family or juvenile or that the matter may be effectively dealt with by some agency other
100 than the court, he may refuse to authorize the filing of a petition. The intake officer shall provide to a
101 person seeking a protective order pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1 a written
102 explanation of the conditions, procedures and time limits applicable to the issuance of protective orders
103 pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1. If the person is seeking a protective order pursuant
104 to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, the intake officer shall provide a written explanation of the
105 conditions, procedures, and time limits applicable to the issuance of protective orders pursuant to
106 § 19.2-152.8, 19.2-152.9, or 19.2-152.10.

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

117 E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an
118 adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in
119 writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate
120 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.), 6.1 (§ 18.2-307.1 et seq.), or 7 (§ 18.2-308.1 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 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

182 is served, the officer shall also serve upon the juvenile written notice of the right to have the charge
183 referred to intake on a form approved by the Supreme Court and make return of such service to the
184 court. If the officer fails to make such service or return, the court shall dismiss the summons without
185 prejudice.

186 4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or
187 Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in
188 § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as
189 provided by law for adults provided that notice of the summons to appear is mailed by the investigating
190 officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

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

193 **§ 54.1-3900. Practice of law; student internship program; definition.**

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

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

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

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

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

210 Nothing herein shall prohibit designated nonattorney employees of the Department of Social Services
211 from completing, signing and filing petitions and motions relating to the establishment, modification, or
212 enforcement of support on forms approved by the Supreme Court of Virginia in Department cases in the
213 juvenile and domestic relations district courts.

214 *Nothing herein shall prohibit designated nonattorney employees of a local department of social
215 services from appearing before an intake officer to initiate a case in accordance with subsection A of
216 § 16.1-260 on behalf of the local department of social services.*

217 *Nothing herein shall prohibit designated nonattorney employees of a local department of social
218 services from completing, signing, and filing with the clerk of the juvenile and domestic relations district
219 court, on forms approved by the Supreme Court of Virginia, petitions for foster care review, petitions
220 for permanency planning hearings, petitions to establish paternity, motions to establish or modify
221 support, motions to amend or review an order, or motions for a rule to show cause.*

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

223 **§ 63.2-332. Powers and duties of local directors.**

224 The local director shall be the administrator of the local department and shall serve as secretary to
225 the local board. Under the supervision of the local board, unless otherwise specifically stated, and in
226 cooperation with other public and private agencies, the local director, in addition to the functions,
227 powers and duties conferred and imposed by other provisions of law, shall have the powers and perform
228 the duties contained in this title.

229 *The local director shall designate nonattorney employees who are authorized to (i) initiate a case on
230 behalf of the local department by appearing before an intake officer or (ii) complete, sign, and file with
231 the clerk of the juvenile and domestic relations district court, on forms approved by the Supreme Court
232 of Virginia, petitions for foster care review, petitions for permanency planning hearings, petitions to
233 establish paternity, motions to establish or modify support, motions to amend or review an order, or
234 motions for a rule to show cause.*

235 **2. That nothing in this bill shall be construed to invalidate prior filings or petitions by local**
236 **departments of social services or by their employees on behalf of the local department prior to**
237 **July 1, 2016.**