

18102720D

HOUSE BILL NO. 274

Offered January 10, 2018

Prefiled January 3, 2018

A BILL to amend and reenact § 16.1-260 of the Code of Virginia, relating to informal truancy plans.

Patron—Ward

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-260 of the Code of Virginia is amended and reenacted as follows:

§ 16.1-260. Intake; petition; investigation.

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection H 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; (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 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

INTRODUCED

HB274

59 the attendance officer has provided documentation to the intake officer that the relevant school division
60 has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with the
61 court. The intake officer may defer filing the complaint for 90 120 days and proceed informally by
62 developing a truancy plan. The intake officer may *not* proceed informally ~~only~~ if the juvenile has ~~not~~
63 previously been proceeded against informally *during the same school year* or adjudicated in need of
64 supervision for failure to comply with compulsory school attendance as provided in § 22.1-254 *during*
65 *the same school year*. The juvenile and his parent or parents, guardian, or other person standing in loco
66 parentis must agree, in writing, for the development of a truancy plan. The truancy plan may include
67 requirements that the juvenile and his parent or parents, guardian, or other person standing in loco
68 parentis participate in such programs, cooperate in such treatment, or be subject to such conditions and
69 limitations as necessary to ensure the juvenile's compliance with compulsory school attendance as
70 provided in § 22.1-254. The intake officer may refer the juvenile to the appropriate public agency for
71 the purpose of developing a truancy plan using an interagency interdisciplinary team approach. The team
72 may include qualified personnel who are reasonably available from the appropriate department of social
73 services, community services board, local school division, court service unit, and other appropriate and
74 available public and private agencies and may be the family assessment and planning team established
75 pursuant to § 2.2-5207. If at the end of the 90-day period the juvenile has not successfully completed
76 the truancy plan or the truancy program, then the intake officer shall file the petition.

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

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

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

115 E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an
116 adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in
117 writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate
118 determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic
119 relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake
120 officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate

121 finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the
122 juvenile may be detained pursuant to the warrant issued in accordance with this subsection. If the intake
123 officer refuses to authorize a petition relating to a child in need of services or in need of supervision, a
124 status offense, or a misdemeanor other than Class 1, his decision is final.

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

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

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

135 1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299
136 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;

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

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

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

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

143 6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter
144 7 of Title 18.2;

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

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

147 9. Robbery pursuant to § 18.2-58;

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

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

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

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

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

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

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

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

165 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
166 commission of any other alcohol-related offense, provided the juvenile is released to the custody of a
167 parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of
168 a parent or legal guardian shall issue a summons to the juvenile and shall also issue a summons
169 requiring the parent or legal guardian to appear before the court with the juvenile. Disposition of the
170 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
171 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
172 sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to
173 §§ 18.2-268.1 through 18.2-268.12 or 29.1-738.2, the provisions of these sections shall be followed
174 except that the magistrate shall authorize execution of the warrant as a summons. The summons shall be
175 served on a parent or legal guardian and the juvenile, and a copy of the summons shall be forwarded to
176 the court in which the violation is to be tried. When a violation of § 18.2-250.1 is charged by summons,
177 the juvenile shall be entitled to have the charge referred to intake for consideration of informal
178 proceedings pursuant to subsection B, provided such right is exercised by written notification to the
179 clerk not later than 10 days prior to trial. At the time such summons alleging a violation of § 18.2-250.1
180 is served, the officer shall also serve upon the juvenile written notice of the right to have the charge
181 referred to intake on a form approved by the Supreme Court and make return of such service to the

182 court. If the officer fails to make such service or return, the court shall dismiss the summons without
183 prejudice.

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

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