

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 16.1-260 of the Code of Virginia, relating to informal truancy plans.*

3 [H 274]

4 Approved

5 **Be it enacted by the General Assembly of Virginia:**6 **1. That § 16.1-260 of the Code of Virginia is amended and reenacted as follows:**7 **§ 16.1-260. Intake; petition; investigation.**

8 A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of
9 a petition, except as provided in subsection H and in § 16.1-259. The form and content of the petition
10 shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the
11 Department of Social Services prior to filing a petition seeking support for a child. Complaints, requests,
12 and the processing of petitions to initiate a case shall be the responsibility of the intake officer.
13 However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own
14 motion with the clerk; (ii) designated nonattorney employees of the Department of Social Services may
15 complete, sign, and file petitions and motions relating to the establishment, modification, or enforcement
16 of support on forms approved by the Supreme Court of Virginia with the clerk; (iii) designated
17 nonattorney employees of a local department of social services may complete, sign, and file with the
18 clerk, on forms approved by the Supreme Court of Virginia, petitions for foster care review, petitions
19 for permanency planning hearings, petitions to establish paternity, motions to establish or modify
20 support, motions to amend or review an order, and motions for a rule to show cause; and (iv) any
21 attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject
22 of the petition is a child alleged to be in need of services, in need of supervision, or delinquent.
23 Complaints alleging abuse or neglect of a child shall be referred initially to the local department of
24 social services in accordance with the provisions of Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2.
25 Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake
26 officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is
27 receiving child support services or public assistance. No individual who is receiving support services or
28 public assistance shall be denied the right to file a petition or motion to establish, modify, or enforce an
29 order for support of a child. If the petitioner is seeking or receiving child support services or public
30 assistance, the clerk, upon issuance of process, shall forward a copy of the petition or motion, together
31 with notice of the court date, to the Division of Child Support Enforcement.

32 B. The appearance of a child before an intake officer may be by (i) personal appearance before the
33 intake officer or (ii) use of two-way electronic video and audio communication. If two-way electronic
34 video and audio communication is used, an intake officer may exercise all powers conferred by law. All
35 communications and proceedings shall be conducted in the same manner as if the appearance were in
36 person, and any documents filed may be transmitted by facsimile process. The facsimile may be served
37 or executed by the officer or person to whom sent, and returned in the same manner, and with the same
38 force, effect, authority, and liability as an original document. All signatures thereon shall be treated as
39 original signatures. Any two-way electronic video and audio communication system used for an
40 appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

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

46 An intake officer may proceed informally on a complaint alleging a child is in need of services, in
47 need of supervision, or delinquent only if the juvenile (i) is not alleged to have committed a violent
48 juvenile felony or (ii) has not previously been proceeded against informally or adjudicated delinquent for
49 an offense that would be a felony if committed by an adult. A petition alleging that a juvenile
50 committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is
51 delinquent for an offense that would be a felony if committed by an adult shall be filed with the court if
52 the juvenile had previously been proceeded against informally by intake or had been adjudicated
53 delinquent for an offense that would be a felony if committed by an adult.

54 If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and
55 the attendance officer has provided documentation to the intake officer that the relevant school division
56 has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with the

57 court. The intake officer may defer filing the complaint for 90 days and proceed informally by
58 developing a truancy plan. ~~The intake officer may proceed informally only if, provided that (a) the~~
59 ~~juvenile has not previously been proceeded against informally or adjudicated in need of supervision on~~
60 ~~more than two occasions for failure to comply with compulsory school attendance as provided in~~
61 ~~§ 22.1-254 and (b) the immediately previous informal action or adjudication occurred at least three~~
62 ~~calendar years prior to the current complaint.~~ The juvenile and his parent or parents, guardian, or other
63 person standing in loco parentis must agree, in writing, for the development of a truancy plan. The
64 truancy plan may include requirements that the juvenile and his parent or parents, guardian, or other
65 person standing in loco parentis participate in such programs, cooperate in such treatment, or be subject
66 to such conditions and limitations as necessary to ensure the juvenile's compliance with compulsory
67 school attendance as provided in § 22.1-254. The intake officer may refer the juvenile to the appropriate
68 public agency for the purpose of developing a truancy plan using an interagency interdisciplinary team
69 approach. The team may include qualified personnel who are reasonably available from the appropriate
70 department of social services, community services board, local school division, court service unit, and
71 other appropriate and available public and private agencies and may be the family assessment and
72 planning team established pursuant to § 2.2-5207. If at the end of the 90-day period the juvenile has not
73 successfully completed the truancy plan or the truancy program, then the intake officer shall file the
74 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)~~ (1) develop a
77 plan for the juvenile, which may include restitution and the performance of community service, based
78 upon community resources and the circumstances which resulted in the complaint, ~~(ii)~~ (2) create an
79 official record of the action taken by the intake officer and file such record in the juvenile's case file,
80 and ~~(iii)~~ (3) advise the juvenile and the juvenile's parent, guardian, or other person standing in loco
81 parentis and the complainant that any subsequent complaint alleging that the child is in need of
82 supervision or delinquent based upon facts which may be sufficient to invoke the jurisdiction of the
83 court pursuant to § 16.1-241 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, (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, or (v) an act of
90 violence, force, or threat has occurred, a protective order is being sought pursuant to § 19.2-152.8,
91 19.2-152.9, or 19.2-152.10, and either the alleged victim or the respondent is a juvenile. If any such
92 complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to
93 be abused, neglected, in need of services, in need of supervision, or delinquent, if the intake officer
94 believes that probable cause does not exist, or that the authorization of a petition will not be in the best
95 interest of the family or juvenile or that the matter may be effectively dealt with by some agency other
96 than the court, he may refuse to authorize the filing of a petition. The intake officer shall provide to a
97 person seeking a protective order pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1 a written
98 explanation of the conditions, procedures and time limits applicable to the issuance of protective orders
99 pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1. If the person is seeking a protective order pursuant
100 to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, the intake officer shall provide a written explanation of the
101 conditions, procedures, and time limits applicable to the issuance of protective orders pursuant to
102 § 19.2-152.8, 19.2-152.9, or 19.2-152.10.

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

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

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

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

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

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

133 1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299
 134 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;

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

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

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

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

141 6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter
 142 7 of Title 18.2;

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

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

145 9. Robbery pursuant to § 18.2-58;

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

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

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

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

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

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

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

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

163 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
 164 commission of any other alcohol-related offense, provided the juvenile is released to the custody of a
 165 parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of
 166 a parent or legal guardian shall issue a summons to the juvenile and shall also issue a summons
 167 requiring the parent or legal guardian to appear before the court with the juvenile. Disposition of the
 168 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
 169 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
 170 sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to
 171 §§ 18.2-268.1 through 18.2-268.12 or 29.1-738.2, the provisions of these sections shall be followed
 172 except that the magistrate shall authorize execution of the warrant as a summons. The summons shall be
 173 served on a parent or legal guardian and the juvenile, and a copy of the summons shall be forwarded to
 174 the court in which the violation is to be tried. When a violation of § 18.2-250.1 is charged by summons,
 175 the juvenile shall be entitled to have the charge referred to intake for consideration of informal
 176 proceedings pursuant to subsection B, provided such right is exercised by written notification to the
 177 clerk not later than 10 days prior to trial. At the time such summons alleging a violation of § 18.2-250.1
 178 is served, the officer shall also serve upon the juvenile written notice of the right to have the charge

179 referred to intake on a form approved by the Supreme Court and make return of such service to the
180 court. If the officer fails to make such service or return, the court shall dismiss the summons without
181 prejudice.

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

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