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HOUSE BILL NO. 1878

Offered January 13, 2021

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A BILL to amend and reenact §§ 16.1-256 and 16.1-260 of the Code of Virginia, relating to juvenile intake and petition; appeal to a magistrate on a finding of no probable cause.

Patrons—Jenkins, Herring, Hope, Lopez and Samirah

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-256 and 16.1-260 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-256. Limitations as to issuance of warrants for juveniles; detention orders.

No warrant of arrest shall be issued for any juvenile by a magistrate, except as follows:

1. As provided in § 16.1-260 on appeal from a decision of an intake officer to refuse to authorize a petition based solely upon a finding that no probable cause exists; or

2. Upon a finding of probable cause to believe that the child is in need of services or is a delinquent, when (i) the court is not open and (ii) the judge and the intake officer of the juvenile and domestic relations district court are not reasonably available. For purposes of this section, the phrase "not reasonably available" means that neither the judge nor the intake officer of the juvenile and domestic relations district court could be reached after the appearance by the juvenile before a magistrate or that neither could arrive within one hour after he was contacted.

When a magistrate is authorized to issue a warrant pursuant to subdivision 2, he may also issue a detention order, if the criteria for detention set forth in § 16.1-248.1 have been satisfied.

Warrants issued pursuant to this section shall be delivered forthwith to the juvenile court.

§ 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.

INTRODUCED

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

64 An intake officer may proceed informally on a complaint alleging a child is in need of services, in
65 need of supervision, or delinquent only if the juvenile (a) is not alleged to have committed a violent
66 juvenile felony or (b) has not previously been proceeded against informally or adjudicated delinquent for
67 an offense that would be a felony if committed by an adult. A petition alleging that a juvenile
68 committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is
69 delinquent for an offense that would be a felony if committed by an adult shall be filed with the court if
70 the juvenile had previously been proceeded against informally by intake or had been adjudicated
71 delinquent for an offense that would be a felony if committed by an adult.

72 If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and
73 the attendance officer has provided documentation to the intake officer that the relevant school division
74 has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with the
75 court. The intake officer may defer filing the petition and proceed informally by developing a truancy
76 plan, provided that (1) the juvenile has not previously been proceeded against informally or adjudicated
77 in need of supervision on more than two occasions for failure to comply with compulsory school
78 attendance as provided in § 22.1-254 and (2) the immediately previous informal action or adjudication
79 occurred at least three calendar years prior to the current complaint. The juvenile and his parent or
80 parents, guardian, or other person standing in loco parentis must agree, in writing, for the development
81 of a truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents,
82 guardian, or other person standing in loco parentis participate in such programs, cooperate in such
83 treatment, or be subject to such conditions and limitations as necessary to ensure the juvenile's
84 compliance with compulsory school attendance as provided in § 22.1-254. The intake officer may refer
85 the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an
86 interagency interdisciplinary team approach. The team may include qualified personnel who are
87 reasonably available from the appropriate department of social services, community services board, local
88 school division, court service unit, and other appropriate and available public and private agencies and
89 may be the family assessment and planning team established pursuant to § 2.2-5207. If at the end of the
90 deferral period the juvenile has not successfully completed the truancy plan or the truancy program, then
91 the intake officer shall file the petition.

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

101 C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody,
102 visitation, or support of a child is the subject of controversy or requires determination, (ii) a person has
103 deserted, abandoned, or failed to provide support for any person in violation of law, (iii) a child or such
104 child's parent, guardian, legal custodian, or other person standing in loco parentis is entitled to treatment,
105 rehabilitation, or other services which are required by law, (iv) family abuse has occurred and a
106 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
107 violence, force, or threat has occurred, a protective order is being sought pursuant to § 19.2-152.8,
108 19.2-152.9, or 19.2-152.10, and either the alleged victim or the respondent is a juvenile. If any such
109 complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to
110 be abused, neglected, in need of services, in need of supervision, or delinquent, if the intake officer
111 believes that probable cause does not exist, or that the authorization of a petition will not be in the best
112 interest of the family or juvenile or that the matter may be effectively dealt with by some agency other
113 than the court, he may refuse to authorize the filing of a petition. The intake officer shall provide to a
114 person seeking a protective order pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1 a written
115 explanation of the conditions, procedures and time limits applicable to the issuance of protective orders
116 pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1. If the person is seeking a protective order pursuant
117 to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, the intake officer shall provide a written explanation of the
118 conditions, procedures, and time limits applicable to the issuance of protective orders pursuant to
119 § 19.2-152.8, 19.2-152.9, or 19.2-152.10.

120 D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall

be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be in need of supervision have utilized or attempted to utilize treatment and services available in the community and have exhausted all appropriate nonjudicial remedies which are available to them. When 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, *when such refusal is based solely upon a finding that no probable cause exists*, the complainant shall be notified in writing at that time of the complainant's right to apply to a magistrate for a warrant. *The complainant shall file the application for a warrant to a magistrate within 10 days of the issuance of the written notification.* 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. *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 when such refusal is based upon a finding that (i) probable cause exists, but that (ii) the matter is appropriate for diversion, his decision is final and the complainant shall not have a right to apply to a magistrate for a warrant.*

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;

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

13. Abduction of any person pursuant to § 18.2-47 or 18.2-48; or

14. A threat pursuant to § 18.2-60.

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.

182 In such cases the court may proceed on a summons issued by the officer investigating the violation in
183 the same manner as provided by law for adults. Additionally, an officer investigating a motor vehicle
184 accident may, at the scene of the accident or at any other location where a juvenile who is involved in
185 such an accident may be located, proceed on a summons in lieu of filing a petition.

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

188 3. In the case of a misdemeanor violation of § 18.2-266, 18.2-266.1, or 29.1-738, or the commission
189 of any other alcohol-related offense, or a violation of § 18.2-250.1, provided that the juvenile is released
190 to the custody of a parent or legal guardian pending the initial court date. The officer releasing a
191 juvenile to the custody of a parent or legal guardian shall issue a summons to the juvenile and shall also
192 issue a summons requiring the parent or legal guardian to appear before the court with the juvenile.
193 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.
194 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
195 refuses to provide a sample of blood or breath or samples of both blood and breath for chemical
196 analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or 29.1-738.2, the provisions of these sections
197 shall be followed except that the magistrate shall authorize execution of the warrant as a summons. The
198 summons shall be served on a parent or legal guardian and the juvenile, and a copy of the summons
199 shall be forwarded to the court in which the violation is to be tried. When a violation of § 4.1-305 or
200 18.2-250.1 is charged by summons, the juvenile shall be entitled to have the charge referred to intake
201 for consideration of informal proceedings pursuant to subsection B, provided that such right is exercised
202 by written notification to the clerk not later than 10 days prior to trial. At the time such summons
203 alleging a violation of § 4.1-305 or 18.2-250.1 is served, the officer shall also serve upon the juvenile
204 written notice of the right to have the charge referred to intake on a form approved by the Supreme
205 Court and make return of such service to the court. If the officer fails to make such service or return,
206 the court shall dismiss the summons without prejudice.

207 4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or
208 Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in
209 § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as
210 provided by law for adults provided that notice of the summons to appear is mailed by the investigating
211 officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

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