

LD4773204

HOUSE BILL NO. 2149

Offered January 23, 1995

A BILL to amend and reenact § 16.1-260, as it is currently effective and as it may become effective, § 16.1-305.1, and § 22.1-288.2 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 16.1-305.2, relating to providing notice of the filing of a juvenile intake petition; disclosure.

Patrons—Diamonstein, Almand, Armstrong, Behm, Bennett, Brickley, Cooper, Council, Croshaw, Davies, Deeds, Grayson, Hull, Moore, Plum, Reynolds and Scott; Senators: Earley, Houck, Saslaw and Woods

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-260, as it is currently effective and as it may become effective, § 6.1-305.1 and § 22.1-288.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 16.1-305.2 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 F of this section 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) the Department of Social Services may file support petitions on its own motion 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 public welfare or social services in accordance with the provisions of Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1. 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. 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. The intake officer shall accept and file a petition in which it is alleged that (i) the custody, visitation or support of a child is the subject of controversy or requires determination, (ii) a person has deserted, abandoned or failed to provide support for any person in violation of law, or (iii) a child or such child's parent, guardian, legal custodian or other person standing in loco parentis is entitled to treatment, rehabilitation or other services which are required by law. If any such complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to be abused, neglected, in need of services, in need of supervision or delinquent, if the intake officer believes that probable cause does not exist, or that the authorization of a petition will not be in the best interest of the family or child or that the matter may be effectively dealt with by some agency other than the court, he may refuse to authorize the filing of a petition.

C. Prior to the filing of any petition alleging that a juvenile is in need of supervision, the matter shall be reviewed by an intake officer who shall determine whether the petitioner and the juvenile 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

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HB2149

60 intake officer determines that the parties have made a reasonable effort to utilize available community
61 treatment or services, may he permit the petition to be filed.

62 D. If the intake officer refuses to authorize a petition relating to an offense that if committed by an
63 adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in
64 writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate
65 determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic
66 relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake
67 officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate
68 finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the child
69 may be detained pursuant to the warrant issued in accordance with this subsection. If the intake officer
70 refuses to authorize a petition relating to a child in need of services or in need of supervision, a status
71 offense, or a misdemeanor other than Class 1, his decision is final.

72 Upon delivery to the juvenile court of a warrant issued pursuant to subdivision 3 of § 16.1-256, the
73 intake officer shall accept and file a petition founded upon the warrant.

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

76 *E1. After a petition is filed alleging that a juvenile committed an act which would be a crime if*
77 *committed by an adult, the intake officer shall, as soon as practicable, provide notice by telephone of*
78 *the filing of the petition and the nature of the offense to (i) the superintendent of the school division or*
79 *(ii) the principal or headmaster of a private school, in which the petitioner alleges the juvenile is or*
80 *should be enrolled, provided the violation involves:*

81 *1. The unlawful purchase, possession or use of a weapon pursuant to Article 4 (§ 18.2-279 et seq.)*
82 *of Chapter 7 of Title 18.2;*

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

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

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

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

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

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

92 *8. Burglary, pursuant to § 18.2-89.*

93 *Promptly after filing a petition the intake officer shall also mail notice, by first class mail, to the*
94 *superintendent or private school principal or headmaster. The failure to provide information regarding*
95 *the school in which the juvenile who is the subject of the petition may be enrolled shall not be grounds*
96 *for refusing to file a petition.*

97 *The information provided to a division superintendent or private school principal or headmaster*
98 *pursuant to this section may be disclosed only as provided in § 16.1-305.2.*

99 F. The filing of a petition shall not be necessary:

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

107 2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subdivision
108 H of § 16.1-241.

109 3. In the case of a violation of § 18.2-266 or § 29.1-738, or the commission of any other
110 alcohol-related offense, provided the child is released to the custody of a parent or legal guardian
111 pending the initial court date. The officer releasing a child to the custody of a parent or legal guardian
112 shall issue a summons to the child and shall also issue a summons requiring the parent or legal guardian
113 to appear before the court with the child. Disposition of the charge shall be in the manner provided in
114 § 16.1-278.8 or § 16.1-278.9. If the child so charged with a violation of § 18.2-266 or § 29.1-738 refuses
115 to provide a sample of blood or breath or samples of both blood and breath for chemical analysis
116 pursuant to §§ 18.2-268.1 through 18.2-268.12 or § 29.1-738.2, the provisions of these sections shall be
117 followed except that the magistrate shall authorize execution of the warrant as a summons. The
118 summons shall be served on a parent or legal guardian and the child, and a copy of the summons shall
119 be forwarded to the court in which the violation of § 18.2-266 or § 29.1-738 is to be tried.

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

§ 16.1-260. (Delayed effective date) 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 F of this section 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) the Department of Social Services may file support petitions on its own motion 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. In addition, all cases for divorce, annulment or affirmation of marriage, separate maintenance, equitable distribution based on a foreign decree, adoption, change of name, amendment of a record of birth and judicial review of school board actions and of hearing officer decisions shall be filed directly with the clerk. Complaints alleging abuse or neglect of a child shall be referred initially to the local department of public welfare or social services in accordance with the provisions of Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1. 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. 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. The intake officer shall accept and file a petition in which it is alleged that (i) the custody, visitation or support of a child is the subject of controversy or requires determination, (ii) a person has deserted, abandoned or failed to provide support or separate maintenance for any person in violation of law, or (iii) a child or such child's parent, guardian, legal custodian or other person standing in loco parentis is entitled to treatment, rehabilitation or other services which are required by law. If any such complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to be abused, neglected, in need of services, in need of supervision or delinquent, if the intake officer believes that probable cause does not exist, or that the authorization of a petition will not be in the best interest of the family or child or that the matter may be effectively dealt with by some agency other than the court, he may refuse to authorize the filing of a petition.

C. Prior to the filing of any petition alleging that a juvenile is in need of supervision, the matter shall be reviewed by an intake officer who shall determine whether the petitioner and the juvenile 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.

D. If the intake officer refuses to authorize a petition relating to an offense which 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 family court. The warrant shall be delivered forthwith to the family 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 child 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 family court of a warrant issued pursuant to subdivision 3 of § 16.1-256, the intake officer shall accept and file a petition founded upon the warrant.

E. The intake officer shall notify the attorney for the Commonwealth of the filing of any petition

183 which alleges facts of an offense which would be a felony if committed by an adult.

184 *E1. After a petition is filed alleging that a juvenile committed an act which would be a crime if*
185 *committed by an adult, the intake officer shall, as soon as practicable, provide notice by telephone of*
186 *the filing of the petition and the nature of the offense to (i) the superintendent of the school division or*
187 *(ii) the principal or headmaster of a private school, in which the petitioner alleges the juvenile is or*
188 *should be enrolled, provided the violation involves:*

189 *1. The unlawful purchase, possession or use of a weapon pursuant to Article 4 (§ 18.2-279 et seq.)*
190 *of Chapter 7 of Title 18.2;*

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

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

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

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

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

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

200 *8. Burglary, pursuant to § 18.2-89.*

201 *Promptly after filing a petition the intake officer shall also mail notice, by first class mail, to the*
202 *superintendent or private school principal or headmaster. The failure to provide information regarding*
203 *the school in which the juvenile who is the subject of the petition may be enrolled shall not be grounds*
204 *for refusing to file a petition.*

205 *The information provided to a division superintendent or private school principal or headmaster*
206 *pursuant to this section may be disclosed only as provided in § 16.1-305.2.*

207 *F. The filing of a petition shall not be necessary:*

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

215 *2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subdivision*
216 *H of § 16.1-241.*

217 *3. In the case of a violation of § 18.2-266 or § 29.1-738, or the commission of any other*
218 *alcohol-related offense, provided the child is released to the custody of a parent or legal guardian*
219 *pending the initial court date. The officer releasing a child to the custody of a parent or legal guardian*
220 *shall issue a summons to the child and shall also issue a summons requiring the parent or legal guardian*
221 *to appear before the court with the child. Disposition of the charge shall be in the manner provided in*
222 *§ 16.1-278.8 or § 16.1-278.9. If the child so charged with a violation of § 18.2-266 or § 29.1-738 refuses*
223 *to provide a sample of blood or breath or samples of both blood and breath for chemical analysis*
224 *pursuant to §§ 18.2-268.1 through 18.2-268.12 or § 29.1-738.2, the provisions of these sections shall be*
225 *followed except that the magistrate shall authorize execution of the warrant as a summons. The*
226 *summons shall be served on a parent or legal guardian and the child, and a copy of the summons shall*
227 *be forwarded to the court in which the violation of § 18.2-266 or § 29.1-738 is to be tried.*

228 *4. In cases of divorce, annulment or affirmation of marriage, separate maintenance, equitable*
229 *distribution based on a foreign decree, and judicial review of school board actions and of hearing officer*
230 *decisions.*

231 *G. Failure to comply with the procedures set forth in this section shall not divest the family court of*
232 *the jurisdiction granted it in § 16.1-241.*

233 *§ 16.1-305.1. Disclosure of disposition in certain delinquency cases.*

234 *Upon disposition of a proceeding in a court of competent jurisdiction in which a juvenile is*
235 *adjudicated delinquent or convicted of a crime based upon a violation of the law involving (i) the*
236 *unlawful purchase, possession or use of a weapon pursuant to Article 4 (§ 18.2-279 et seq.) of Chapter 7*
237 *of Title 18.2, (ii) homicide, pursuant to Article 1 (§ 18.2-31 et seq.) of Chapter 4 of Title 18.2, (iii)*
238 *felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title*
239 *18.2, (iv) criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, (v)*
240 *manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, pursuant to*
241 *Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, (vi) manufacture, sale or distribution of*
242 *marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, (vii) arson and related*
243 *crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, or (viii) burglary, pursuant to*
244 *§ 18.2-89, the clerk of the court in which the disposition is entered shall, within fifteen days if there has*

been no notice of an appeal, provide written notice of the disposition ordered by the court, including the nature of the offense upon which the adjudication or conviction was based, to the superintendent of the school division in which the child is enrolled at the time of the disposition or, if he is not then enrolled in school, the division in which he was enrolled at the time of the offense. *However, if the juvenile is enrolled in a private school the notice shall be sent to the school principal or headmaster.* Further disclosure of this information by the superintendent, principal or headmaster to school personnel is authorized only as provided in § 22.1-288.2.

§ 16.1-305.2. *Disclosure of notice of the filing of a petition by division superintendent, principal or headmaster.*

Except as otherwise provided in this section, a division superintendent or private school principal or headmaster shall not disclose information contained in or derived from a notice of petition received pursuant to § 16.1-260. If the juvenile is not enrolled as a student in a public school in the division or in the private school to which the notice was given, the superintendent, principal or headmaster shall promptly so notify the intake officer of the juvenile court in which the petition was filed.

If the division superintendent believes that disclosure to school personnel is necessary to ensure the physical safety of the juvenile, other students or school personnel within the division, he may at any time prior to receipt of the notice of disposition in accordance with § 16.1-305.1, disclose the fact of the filing of the petition and the nature of the offense to the principal of the school in which the juvenile who is the subject of the petition is enrolled. The principal may further disseminate the information, after the juvenile has been taken into custody, whether or not the child has been released, only to those students and school personnel having direct contact with the juvenile and need of the information to ensure physical safety or the appropriate educational placement or other educational services.

If a private school principal or headmaster believes that disclosure to school personnel is necessary to ensure the physical safety of the juvenile, other students or school personnel within the division, he may disclose the fact of the filing of the petition and the nature of the offense to those students and school personnel having direct contact with the juvenile and need of the information to ensure physical safety or the appropriate educational placement or other educational services.

§ 22.1-288.2. Receipt, dissemination and maintenance of records of certain adjudications or convictions.

~~The~~ A. A division superintendent, private school principal or private school headmaster shall disseminate the notice or information contained in a notice received by him pursuant to § 16.1-305.1 to school personnel responsible for the management of student records and to other relevant school personnel, including, but not limited to, the principal of the school in which the student is enrolled, only (i) if the student poses a danger to himself or others or (ii) to facilitate the student's appropriate educational placement or other educational services.

B. A parent, guardian or other person having control or charge of ~~the~~ a student in a public school and, with consent of a parent or in compliance with a court order, the court in which the disposition was rendered, shall be notified in writing of any disciplinary action taken with regard to any incident upon which the adjudication or conviction was based and the reasons therefor. The parent or guardian shall also be notified of his or her right to review, and to request an amendment of, the student's scholastic record, in accordance with regulations of the Board of Education governing the management of scholastic records.

Every notice of adjudication or conviction received by a superintendent, and information contained in the notice, which is not a disciplinary record as defined in Board of Education regulations, shall be maintained by him and by any others to whom he disseminates it, separately from all other records concerning the student. However, if the school administrators or the school board takes disciplinary action against a student based upon an incident which formed the basis for the adjudication or conviction, the notice shall become a part of the student's disciplinary record.