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HOUSE BILL NO. 1274

Offered January 22, 1996

A BILL to amend and reenact § 16.1-260, as it is currently effective and as it may become effective, and § 22.1-280.1 of the Code of Virginia, relating to reports of certain acts to school authorities; private and parochial schools.

Patron—Fisher

Referred to Committee on Education

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, and § 22.1-280.1 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 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 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 that if committed by an adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in

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

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

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

72 E1. After a petition is filed alleging that a juvenile committed an act which would be a crime if
73 committed by an adult, the intake officer shall, as soon as practicable, provide notice by telephone of
74 the filing of the petition and the nature of the offense to the superintendent of the school division *or the*
75 *chief administrator of the private or parochial school* in which the petitioner alleges the juvenile is or
76 should be enrolled, provided the violation involves:

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

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

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

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

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

85 6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter
86 7 of Title 18.2;

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

88 8. Burglary, pursuant to § 18.2-89.

89 Promptly after filing a petition the intake officer shall also mail notice, by first class mail, to the
90 superintendent *or chief administrator*. The failure to provide information regarding the school in which
91 the juvenile who is the subject of the petition may be enrolled shall not be grounds for refusing to file a
92 petition.

93 The information provided to a division superintendent *or chief administrator* pursuant to this section
94 may be disclosed only as provided in § 16.1-305.2.

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

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

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

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

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

121 G. Failure to comply with the procedures set forth in this section shall not divest the juvenile court

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.

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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.

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

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

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

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194 Title 18.2;

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

198 6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter
199 7 of Title 18.2;

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203 superintendent *or chief administrator*. The failure to provide information regarding the school in which
204 the juvenile who is the subject of the petition may be enrolled shall not be grounds for refusing to file a
205 petition.

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207 may be disclosed only as provided in § 16.1-305.2.

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

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

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

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

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

239 § 22.1-280.1. Reports of certain acts to school authorities.

240 A. Reports shall be made to the principal or his designee on all incidents involving (i) the assault,
241 assault and battery, sexual assault, death, shooting, stabbing, cutting, or wounding of any person on a
242 school bus, on school property, or at a school-sponsored activity; (ii) any conduct involving alcohol,
243 marijuana, a controlled substance, imitation controlled substance, or an anabolic steroid on a school bus,
244 on school property, or at a school-sponsored activity; (iii) any threats against school personnel while on

a school bus, on school property or at a school-sponsored activity; or (iv) the illegal carrying of a firearm onto school property. The principal or his designee shall submit a report of all such incidents to the superintendent of the school division. The division superintendent shall annually report all such incidents to the Department of Education for the purpose of recording the frequency of such incidents on forms which shall be provided by the Department. A division superintendent who knowingly fails to comply or secure compliance with the reporting requirements of this subsection shall be subject to the sanctions authorized in § 22.1-65.

B. The principal or his designee shall notify the parent of any student involved in an incident required by subsection A to be reported, regardless of whether disciplinary action is taken against such student or the nature of the disciplinary action. Such notice shall relate to only the relevant student's involvement and shall not include information concerning other students.

Whenever any student commits any reportable incident as set forth in this section, such student shall be required to participate in such prevention and intervention activities as deemed appropriate by the superintendent or his designee. Prevention and intervention activities shall be identified in the local school division's drug and violence prevention plans developed pursuant to the federal Improving America's Schools Act of 1994 (Title IV - "Safe and Drug-Free Schools and Communities Act").

C. Division superintendents shall report to the local law-enforcement agency any act enumerated in subsection A which may constitute a criminal offense.

D. All school boards shall develop, in cooperation with the local law-enforcement agencies, juvenile and domestic relations court judges and personnel, parents, and the community at large, programs to prevent violence and crime on school property and at school-sponsored events. Activities designed to prevent the recurrence of violence and crime may include such interventions as school crime lines, peer mediation, conflict resolution, community service requirements, and any program focused on demonstrating the consequences of violence and crime.

E. A statement providing a procedure and the purpose for the requirements of this section shall be included in the policy manual of all school divisions.

The Board of Education shall promulgate regulations to implement this section including, but not limited to, establishing reporting dates and report formats.

F. School boards are encouraged to develop and use a network of volunteer services in implementing the prevention activities required by subsection D.

G. For the purposes of this section, "parent" or "parents" means any parent, guardian or other person having control or charge of a child.

H. This section shall not be construed to diminish the authority of the Board of Education or the Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the federal Improving America's Schools Act of 1994, or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.

I. The provisions of this section shall apply mutatis mutandis to private and parochial schools and to the principals, administrators, students, and parents thereof.