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HOUSE BILL NO. 1274

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Education

on February 9, 1996)

(Patron Prior to Substitute—Delegate Fisher)

A *BILL to amend and reenact § 16.1-260, as it is currently effective and as it may become effective, and § 16.1-305.1 of the Code of Virginia, relating to reports of certain acts to school authorities; private and parochial schools.*

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 § 16.1-305.1 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 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 juvenile and domestic

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

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

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

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

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

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

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

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

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

83 6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter
84 7 of Title 18.2;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

237 § 16.1-305.1. Disclosure of disposition in certain delinquency cases.

238 Upon disposition of a proceeding in a court of competent jurisdiction in which a juvenile is
239 adjudicated delinquent or convicted of a crime based upon a violation of the law involving (i) the
240 unlawful purchase, possession or use of a weapon pursuant to Article 4 (§ 18.2-279 et seq.) of Chapter 7
241 of Title 18.2, (ii) homicide, pursuant to Article 1 (§ 18.2-31 et seq.) of Chapter 4 of Title 18.2, (iii)
242 felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title
243 18.2, (iv) criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, (v)
244 manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, pursuant to

245 Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, (vi) manufacture, sale or distribution of
246 marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, (vii) arson and related
247 crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, or (viii) burglary, pursuant to
248 § 18.2-89, the clerk of the court in which the disposition is entered shall, within fifteen days if there has
249 been no notice of an appeal, provide written notice of the disposition ordered by the court, including the
250 nature of the offense upon which the adjudication or conviction was based, to the superintendent of the
251 school division *or the chief administrator of the private or parochial school* in which the child is
252 enrolled at the time of the disposition or, if he is not then enrolled in school, the division *or private or*
253 *parochial school* in which he was enrolled at the time of the offense. Further disclosure of this
254 information by the superintendent to school personnel is authorized only as provided in § 22.1-288.2.