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HOUSE BILL NO. 560

Offered January 19, 1996

A *BILL to amend and reenact § 16.1-260 as it is currently effective and as it may become effective and § 19.2-3.1 of the Code of Virginia, relating to appearance before intake officer by electronic communication.*

Patrons—Davies, Bryant, Johnson, Putney, Rollison, Stump and Weatherholtz; Senators: Bolling and Houck

Referred to Committee for Courts of Justice

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 § 19.2-3.1 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-260. (For effective date - See note) 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 ~~FH~~ 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. *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.*

C. 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.~~ D. 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

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60 alleged to be in need of supervision have utilized or attempted to utilize treatment and services available
61 in the community and have exhausted all appropriate nonjudicial remedies which are available to them.
62 When the intake officer determines that the parties have not attempted to utilize available treatment or
63 services or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer
64 the petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment
65 facility or individual to receive treatment or services, and a petition shall not be filed. Only after the
66 intake officer determines that the parties have made a reasonable effort to utilize available community
67 treatment or services, may he permit the petition to be filed.

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

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

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

82 ~~E-1.~~ G. After a petition is filed alleging that a juvenile committed an act which would be a crime if
83 committed by an adult, the intake officer shall, as soon as practicable, provide notice by telephone of
84 the filing of the petition and the nature of the offense to the superintendent of the school division in
85 which the petitioner alleges the juvenile is or should be enrolled, provided the violation involves:

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

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

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

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

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

94 6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter
95 7 of Title 18.2;

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

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

98 Promptly after filing a petition the intake officer shall also mail notice, by first class mail, to the
99 superintendent. The failure to provide information regarding the school in which the juvenile who is the
100 subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

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

103 ~~F.~~ H. The filing of a petition shall not be necessary:

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

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

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

summons shall be served on a parent or legal guardian and the child, and a copy of the summons shall be forwarded to the court in which the violation of § 18.2-266 or § 29.1-738 is to be tried.

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

G. I. 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 - See notes) 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 FH 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.

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G. D. 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

183 services or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer
184 the petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment
185 facility or individual to receive treatment or services, and a petition shall not be filed. Only after the
186 intake officer determines that the parties have made a reasonable effort to utilize available community
187 treatment or services, may he permit the petition to be filed.

188 ~~D.~~ E. If the intake officer refuses to authorize a petition relating to an offense which if committed by
189 an adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified
190 in writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate
191 determines that probable cause exists, he shall issue a warrant returnable to the family court. The
192 warrant shall be delivered forthwith to the family court, and the intake officer shall accept and file a
193 petition founded upon the warrant. If the court is closed and the magistrate finds that the criteria for
194 detention or shelter care set forth in § 16.1-248.1 have been satisfied, the child may be detained pursuant
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205 which the petitioner alleges the juvenile is or should be enrolled, provided the violation involves:

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210 Title 18.2;

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213 pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

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227 court may proceed on a summons issued by the officer investigating the violation in the same manner as
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240 pursuant to §§ 18.2-268.1 through 18.2-268.12 or § 29.1-738.2, the provisions of these sections shall be
241 followed except that the magistrate shall authorize execution of the warrant as a summons. The
242 summons shall be served on a parent or legal guardian and the child, and a copy of the summons shall
243 be forwarded to the court in which the violation of § 18.2-266 or § 29.1-738 is to be tried.

244 4. In cases of divorce, annulment or affirmation of marriage, separate maintenance, equitable

245 distribution based on a foreign decree, and judicial review of school board actions and of hearing officer
246 decisions.

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

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

254 § 19.2-3.1. Personal appearance by two-way electronic video and audio communication; standards.

255 A. Where an appearance is required or permitted before a magistrate, *intake officer* or, prior to trial,
256 before a judge, the appearance may be by (i) personal appearance before the magistrate, *intake officer* or
257 judge or (ii) use of two-way electronic video and audio communication. If two-way electronic video and
258 audio communication is used, a magistrate, *intake officer* or judge may exercise all powers conferred by
259 law and all communications and proceedings shall be conducted in the same manner as if the
260 appearance were in person, and any documents filed may be transmitted by electronically transmitted
261 facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and
262 returned in the same manner, and with the same force, effect, authority, and liability as an original
263 document. All signatures thereon shall be treated as original signatures.

264 B. Any two-way electronic video and audio communication system used for an appearance shall meet
265 the following standards:

- 266 1. The persons communicating must simultaneously see and speak to one another;
- 267 2. The signal transmission must be live, real time;
- 268 3. The signal transmission must be secure from interception through lawful means by anyone other
269 than the persons communicating; and
- 270 4. Any other specifications as may be promulgated by the Chief Justice of the Supreme Court.