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HOUSE BILL NO. 1817

House Amendments in [] — February 7, 1999

A BILL to amend and reenact §§ 16.1-260, 22.1-258, 22.1-260, 22.1-261, 22.1-262, and 22.1-263 of the Code of Virginia, relating to truancy; penalty.

Patrons—Hamilton, Cantor, Albo, Armstrong, Darner, Davis, Dillard, Jackson, Jones, J.C., Jones, S.C., Landes and McDonnell; Senators: Forbes, Hawkins and Woods

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-260, 22.1-258, 22.1-260, 22.1-261, 22.1-262, and 22.1-263 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 H 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.

1. 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.

~~However,~~ An intake officer may proceed informally on a complaint alleging a child is in need of services, in need of supervision or delinquent only if the juvenile (i) is not alleged to have committed a violent juvenile felony ~~or~~; (ii) has not previously been adjudicated in need of supervision or delinquent; ~~or (iii) is not the subject of a complaint filed pursuant to § 22.1-258 and the attendance officer has provided documentation to the court that the relevant school division has complied with the provisions of § 22.1-258.~~ A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is in need of supervision or delinquent shall be filed with the court if the juvenile had previously ~~been proceeded against informally by [the court intake] or~~ had been adjudicated in need of supervision or delinquent.

Whenever informal action is taken as provided in this subsection on a complaint alleging that a child is in need of services, is in need of supervision or delinquent, the intake officer shall (i) develop a plan for the juvenile, which may include restitution and the performance of community service, based upon

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60 community resources and the circumstances which resulted in the complaint, (ii) create an official record
61 of the action taken by the intake officer and file such record in the juvenile's case file, and (iii) advise
62 the juvenile and the juvenile's parent, guardian or other person standing in loco parentis; and the
63 complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent
64 based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241
65 will result in the filing of a petition with the court.

66 C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody,
67 visitation or support of a child is the subject of controversy or requires determination, (ii) a person has
68 deserted, abandoned or failed to provide support for any person in violation of law, or (iii) a child or
69 such child's parent, guardian, legal custodian or other person standing in loco parentis is entitled to
70 treatment, rehabilitation or other services which are required by law. If any such complainant does not
71 file a petition, the intake officer may file it. In cases in which a child is alleged to be abused, neglected,
72 in need of services, in need of supervision or delinquent, if the intake officer believes that probable
73 cause does not exist, or that the authorization of a petition will not be in the best interest of the family
74 or juvenile or that the matter may be effectively dealt with by some agency other than the court, he may
75 refuse to authorize the filing of a petition.

76 D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall
77 be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be
78 in need of supervision have utilized or attempted to utilize treatment and services available in the
79 community and have exhausted all appropriate nonjudicial remedies which are available to them. When
80 the intake officer determines that the parties have not attempted to utilize available treatment or services
81 or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the
82 petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility
83 or individual to receive treatment or services, and a petition shall not be filed. Only after the intake
84 officer determines that the parties have made a reasonable effort to utilize available community
85 treatment or services; may he permit the petition to be filed.

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

96 Upon delivery to the juvenile court of a warrant issued pursuant to subdivision 2 of § 16.1-256, the
97 intake officer shall accept and file a petition founded upon the warrant.

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

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

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

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

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

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

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

112 6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter
113 7 of Title 18.2;

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

115 8. Burglary and related offenses, pursuant to §§ 18.2-89 through 18.2-93.

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

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

121 H. The filing of a petition shall not be necessary:

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

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

3. In the case of a violation of § 18.2-266 or § 29.1-738, or the commission of any other alcohol-related offense, provided the juvenile is released to the custody of a parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of a parent or legal guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or legal guardian to appear before the court with the juvenile. Disposition of the charge shall be in the manner provided in § 16.1-278.8 or § 16.1-278.9. If the juvenile so charged with a violation of § 18.2-266 or § 29.1-738 refuses to provide a sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or § 29.1-738.2, the provisions of these sections shall be 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 juvenile, 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 a 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.

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.

§ 22.1-258. Appointment of attendance officers; notification when pupil fails to report to school.

Every school board shall have power to appoint one or more attendance officers, who shall be charged with the enforcement of the provisions of this article. Where no attendance officer is appointed by the school board, the division superintendent shall act as attendance officer.

Whenever any pupil fails to report to school on a regularly scheduled school day and no indication has been received by school personnel that the pupil's parent is aware of *and supports* the pupil's absence, a reasonable effort to notify by telephone the parent *to obtain an explanation for the pupil's absence* shall be made by the attendance officer, other school personnel, or volunteers organized by the school administration for this purpose. *[Any such volunteers shall not be liable for any civil damages for any acts or omissions resulting from making such reasonable efforts to notify parents and obtain such explanation when such acts or omissions are taken in good faith, unless such acts or omissions were the result of gross negligence or willful misconduct. This subsection shall not be construed to limit, withdraw, or overturn any defense or immunity already existing in statutory or common law or to affect any claim occurring prior to the effective date of this law.]* School divisions are encouraged to use noninstructional personnel for this notice.

Whenever any pupil fails to report to school for ~~three consecutive school days, or for a total of five scheduled school days per month or an aggregate of seven scheduled school days per school calendar quarter, whichever occurs sooner,~~ *[for the school year]* and no indication has been received by school personnel that the pupil's parent is aware of *and supports* the pupil's absence, and a reasonable effort to notify the parent has failed, the school principal or his designee shall ~~notify the parent by letter that such parent is requested to advise the school in writing of the reason for the pupil's absence or to accompany the pupil upon his return to school to explain the reason for his absence ensure that direct contact is made with the parent, either in person or through telephone conversation, by the attendance officer to obtain an explanation for the pupil's absence and to explain to the parent the consequences of continued nonattendance. The attendance officer, the pupil, and the pupil's parent shall jointly develop a plan to resolve the pupil's nonattendance. Such plan shall include documentation of the reasons for the pupil's nonattendance.~~

If the pupil is absent an additional day after direct contact with the pupil's parent and the attendance officer has received no indication that the pupil's parent is aware of and supports the pupil's absence, the attendance officer shall [hold schedule] a conference within ten school days with the pupil, his parent, and school personnel, which conference may include other community service providers, to resolve issues related to the pupil's nonattendance. [The conference shall be held no later than fifteen school days after the fifth absence.] Upon the failure of the parent to so advise the school

183 or to return the child to school within three school days of the date of the notice, the next absence by
184 such pupil without indication to the attendance officer that the pupil's parent is aware of and supports
185 the pupil's absence, the school principal or his designee shall notify the attendance officer or the
186 division superintendent, as the case may be, who shall enforce the provisions of this article by either or
187 both of the following: (i) filing a complaint with the juvenile and domestic relations court alleging the
188 pupil is a child in need of supervision as defined in § 16.1-228 or (ii) instituting proceedings against the
189 parent pursuant to § 18.2-371 or § 22.1-262. [In filing a complaint against the student, the attendance
190 officer shall provide written documentation of the efforts to comply with the provisions of this section.]
191 In the event that both parents have been awarded joint physical custody pursuant to § 20-124.2, and the
192 school has received notice of such order, both parents shall be notified at the last known addresses of
193 the parents.

194 However, Nothing in this section shall be construed to limit in any way the authority of any
195 attendance officer or division superintendent to seek immediate compliance with the compulsory school
196 attendance law as set forth in this article.

197 Attendance officers, other school personnel or volunteers organized by the school administration for
198 this purpose shall be immune from any civil or criminal liability in connection with the notice to parents
199 of a pupil's absence or failure to give such notice as required by this section.

200 [*School boards shall include in their student conduct and attendance policies provisions prohibiting*
201 *the failure of a pupil solely on the basis of the pupil's nonattendance without first conducting the*
202 *conference required by this section.*]

203 § 22.1-260. Reports of children enrolled and not enrolled; nonattendance.

204 A. Within ten days after the opening of the school, each public school principal shall report to the
205 division superintendent:

206 1. The name, age and grade of each pupil enrolled in the school, and the name and address of the
207 pupil's parent or guardian; and

208 2. To the best of the principal's information, the name of each child subject to the provisions of this
209 article who is not enrolled in school, with the name and address of the child's parent or guardian.

210 B. At the end of each school year, each public school principal shall report to the division
211 superintendent the number of pupils by grade level who failed to report to school on a regularly
212 scheduled school day and for whom no indication was received by school personnel that the pupil's
213 parent was aware of and supported the pupil's nonattendance, as set forth in § 22.1-258. The division
214 superintendent shall compile such grade level information for the division and provide such information
215 to the Superintendent of Public Instruction annually.

216 B. C. For the purposes of this section, each student shall present a federal social security number
217 within ninety days of his enrollment. The Board of Education shall, after consulting with the Social
218 Security Administration, promulgate guidelines for determining which individuals are eligible to obtain
219 social security numbers. In any case in which an individual is ineligible, pursuant to these guidelines, to
220 obtain a social security number, the superintendent or his designee may waive this requirement.

221 § 22.1-261. Attendance officer to make list of children not enrolled; duties of attendance officer.

222 The attendance officer or the division superintendent shall check the reports submitted pursuant to
223 subsection A of § 22.1-260 with the last school census and with reports from the State Registrar of Vital
224 Records and Health Statistics. From these reports and from any other reliable source the attendance
225 officer or the division superintendent shall, within five days after receiving all reports submitted
226 pursuant to subsection A of § 22.1-260, make a list of the names of children who are not enrolled in any
227 school and who are not exempt from school attendance. It shall be the duty of the attendance officer, on
228 behalf of the local school board, to investigate all cases of nonenrollment and, when no valid reason is
229 found therefor, to notify the parent, guardian or other person having control of the child to require the
230 attendance of such child at the school within three days from the date of such notice.

231 § 22.1-262. Complaint to court when parent fails to comply with law.

232 A list of persons so notified pursuant to § 22.1-261 shall be sent by the attendance officer to the
233 appropriate school principal. If the parent, guardian, or other person having control of the child (i) fails
234 to comply with the law provisions of § 22.1-261 within the time specified in the notice; [or] (ii) fails
235 to comply with the provisions of § 22.1-254; or (iii) refuses to participate in the development of the plan
236 to resolve the student's nonattendance or in the conference provided for in § 22.1-258, it shall be the
237 duty of the attendance officer, with the knowledge and approval of the division superintendent, to make
238 complaint against the pupil's parent in the name of the Commonwealth before the juvenile and domestic
239 relations district court [~~and~~ . If proceedings are instituted against the parent for failure to comply with
240 the provisions of § 22.1-258, the attendance officer is] to provide documentation to the court regarding
241 the school division's compliance with § 22.1-258. In addition thereto, such child may be proceeded
242 against as a child in need of services or a child in need of supervision as provided in Chapter 11
243 (§ 16.1-226 et seq.) of Title 16.1.

244 § 22.1-263. Violation constitutes misdemeanor.

245 Any person violating the provisions of either § 22.1-254, except for subsection E, §§ 22.1-255,
246 22.1-258, or § 22.1-267 shall be guilty of a Class 3 misdemeanor. Upon a finding that a person
247 knowingly and willfully violated any provision of § 22.1-254, except for subsection E, or any provision
248 of §§ 22.1-255, 22.1-258, or § 22.1-267 and that such person has been convicted previously of a
249 violation of any provision of § 22.1-254, except for subsection E, or any provision of §§ 22.1-255,
250 22.1-258, or § 22.1-267, such person shall be guilty of a Class 2 misdemeanor.

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