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## HOUSE BILL NO. 107

Offered January 13, 2010

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A *BILL to amend and reenact §§ 16.1-260 and 16.1-293 of the Code of Virginia, relating to adult students under the jurisdiction of the juvenile and domestic relations district court; notification to schools.*

Patron—Cole

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That §§ 16.1-260 and 16.1-293 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) designated nonattorney employees of the Department of Social Services may complete, sign and file petitions and motions relating to the establishment, modification, or enforcement of support on forms approved by the Supreme Court of Virginia 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 social services in accordance with the provisions of Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2. 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.

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.

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 proceeded against informally or adjudicated delinquent for an offense that would be a felony if committed by an adult. A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is delinquent for an offense that would be a felony if committed by an adult shall be filed with the court if the juvenile had previously been proceeded against informally by intake or had been adjudicated delinquent for an offense that would be a felony if committed by an adult.

If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and the attendance officer has provided documentation to the intake officer that the relevant school division has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with the

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59 court. The intake officer may defer filing the complaint for 90 days and proceed informally by  
60 developing a truancy plan. The intake officer may proceed informally only if the juvenile has not  
61 previously been proceeded against informally or adjudicated in need of supervision for failure to comply  
62 with compulsory school attendance as provided in § 22.1-254. The juvenile and his parent or parents,  
63 guardian or other person standing in loco parentis must agree, in writing, for the development of a  
64 truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents,  
65 guardian or other person standing in loco parentis participate in such programs, cooperate in such  
66 treatment or be subject to such conditions and limitations as necessary to ensure the juvenile's  
67 compliance with compulsory school attendance as provided in § 22.1-254. The intake officer may refer  
68 the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an  
69 interagency interdisciplinary team approach. The team may include qualified personnel who are  
70 reasonably available from the appropriate department of social services, community services board, local  
71 school division, court service unit and other appropriate and available public and private agencies and  
72 may be the family assessment and planning team established pursuant to § 2.2-5207. If at the end of the  
73 90-day period the juvenile has not successfully completed the truancy plan or the truancy program, then  
74 the intake officer shall file the petition.

75 Whenever informal action is taken as provided in this subsection on a complaint alleging that a child  
76 is in need of services, in need of supervision or delinquent, the intake officer shall (i) develop a plan for  
77 the juvenile, which may include restitution and the performance of community service, based upon  
78 community resources and the circumstances which resulted in the complaint, (ii) create an official record  
79 of the action taken by the intake officer and file such record in the juvenile's case file, and (iii) advise  
80 the juvenile and the juvenile's parent, guardian or other person standing in loco parentis and the  
81 complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent  
82 based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241  
83 will result in the filing of a petition with the court.

84 C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody,  
85 visitation or support of a child is the subject of controversy or requires determination, (ii) a person has  
86 deserted, abandoned or failed to provide support for any person in violation of law, (iii) a child or such  
87 child's parent, guardian, legal custodian or other person standing in loco parentis is entitled to treatment,  
88 rehabilitation or other services which are required by law, or (iv) family abuse has occurred and a  
89 protective order is being sought pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1. If any such  
90 complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to  
91 be abused, neglected, in need of services, in need of supervision or delinquent, if the intake officer  
92 believes that probable cause does not exist, or that the authorization of a petition will not be in the best  
93 interest of the family or juvenile or that the matter may be effectively dealt with by some agency other  
94 than the court, he may refuse to authorize the filing of a petition. The intake officer shall provide to a  
95 person seeking a protective order pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1 a written  
96 explanation of the conditions, procedures and time limits applicable to the issuance of protective orders  
97 pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1.

98 D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall  
99 be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be  
100 in need of supervision have utilized or attempted to utilize treatment and services available in the  
101 community and have exhausted all appropriate nonjudicial remedies which are available to them. When  
102 the intake officer determines that the parties have not attempted to utilize available treatment or services  
103 or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the  
104 petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility  
105 or individual to receive treatment or services, and a petition shall not be filed. Only after the intake  
106 officer determines that the parties have made a reasonable effort to utilize available community  
107 treatment or services may he permit the petition to be filed.

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

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

120 F. 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.

G. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter, the intake officer shall file a report with the division superintendent of the school division in which any student who is the subject of a petition alleging that such student who is a juvenile has committed an act, wherever committed, which would be a crime if committed by an adult, *or that such student who is an adult has committed a crime and is alleged to be within the jurisdiction of the court*. The report shall notify the division superintendent of the filing of the petition and the nature of the offense, if the violation involves:

1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299 et seq.), or 7 (§ 18.2-308 et seq.) of Chapter 7 of Title 18.2;

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

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

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

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

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

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

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

9. Robbery pursuant to § 18.2-58;

10. Prohibited criminal street gang activity pursuant to § 18.2-46.2;

11. Recruitment of other juveniles for a criminal street gang activity pursuant to § 18.2-46.3; or

12. An act of violence by a mob pursuant to § 18.2-42.1.

The failure to provide information regarding the school in which the ~~juvenile~~ *juvenile student* who is the subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

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

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, animal control violations or littering 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 subsection 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 § 18.2-51.4, 18.2-266, 18.2-266.1, 18.2-272, 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 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.

§ 16.1-293. Supervision of juvenile or person during commitment and on parole; placing juvenile in halfway house.

At such time as the court commits a juvenile to the Department, the juvenile and domestic relations district court service unit shall maintain contact with the juvenile during the juvenile's commitment.

182 If a person is placed on parole supervision following that person's release from commitment to the  
183 Department, the court services unit providing parole supervision shall furnish the person a written  
184 statement of the conditions of his parole and shall instruct him regarding the same. The conditions of  
185 the reenrollment plan may be included in the conditions of parole. Violations of parole shall be heard by  
186 the court pursuant to § 16.1-291. If the parole supervision is for an indeterminate period of time, the  
187 director of the supervising court services unit may approve termination of parole supervision.

188 The Department shall notify the school division superintendent in the locality where the ~~juvenile~~  
189 *person* was enrolled of his commitment to a facility. The court services unit shall, in consultation with  
190 the Department of Correctional Education, the local school division, and the juvenile correctional  
191 counselor, develop a reenrollment plan if the ~~juvenile~~ *person* is of compulsory school attendance age or  
192 is eligible for special education services pursuant to § 22.1-213. The reenrollment plan shall be in  
193 accordance with regulations adopted by the Board of Education pursuant to § 22.1-17.1. The  
194 superintendent shall provide the ~~juvenile's~~ *person's* scholastic records, as defined in § 22.1-289, and the  
195 terms and conditions of any expulsion which was in effect at the time of commitment or which will be  
196 in effect upon release. A court may not order a local school board to reenroll a ~~juvenile~~ *person* who has  
197 been expelled in accordance with the procedures set forth in § 22.1-277.06. At least ~~fourteen~~ 14 days  
198 prior to the ~~juvenile's~~ *person's* scheduled release, the Department shall notify the school division  
199 superintendent in the locality where the ~~juvenile~~ *person* will reside.

200 In the event it is determined by the juvenile and domestic relations district court that a person may  
201 benefit from placement in the halfway house program operated by the Department, the person may be  
202 referred for care and treatment to a halfway house. Persons so placed in a halfway house shall remain in  
203 parole status and cannot be transferred or otherwise placed in another institutional setting or institutional  
204 placement operated by the Department except as elsewhere provided by law for those persons who have  
205 violated their parole status.

206 In the event that the person was in the custody of the local department of social services immediately  
207 prior to his commitment to the Department and has not attained the age of ~~eighteen~~ 18 years, the local  
208 department of social services shall resume custody upon the person's release from commitment, unless  
209 an alternative arrangement for the custody of the person has been made and communicated in writing to  
210 the Department. The court services unit shall consult with the local department of social services four  
211 weeks prior to the person's release from commitment on parole supervision concerning return of the  
212 person to the locality and the placement of the person. The court services unit will be responsible for  
213 supervising the person's terms and conditions of parole.