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HOUSE BILL NO. 2002

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 10, 2021)

(Patron Prior to Substitute—Delegate Samirah)

A *BILL to amend and reenact §§ 16.1-260 and 63.2-1903 of the Code of Virginia, relating to child support; health care coverage.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-260 and 63.2-1903 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 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; (iii) designated nonattorney employees of a local department of social services may complete, sign, and file with the clerk, on forms approved by the Supreme Court of Virginia, petitions for foster care review, petitions for permanency planning hearings, petitions to establish paternity, motions to establish or modify support, motions to amend or review an order, and motions for a rule to show cause; and (iv) 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. *If a petitioner is seeking to establish child support, the intake officer shall provide the petitioner information on the possible availability of medical assistance through the Family Access to Medical Insurance Security (FAMIS) plan or other government-sponsored coverage through the Department of Medical Assistance Services.*

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 (a) is not alleged to have committed a violent juvenile felony or (b) 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.

60 If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and
61 the attendance officer has provided documentation to the intake officer that the relevant school division
62 has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with the
63 court. The intake officer may defer filing the petition and proceed informally by developing a truancy
64 plan, provided that (1) the juvenile has not previously been proceeded against informally or adjudicated
65 in need of supervision on more than two occasions for failure to comply with compulsory school
66 attendance as provided in § 22.1-254 and (2) the immediately previous informal action or adjudication
67 occurred at least three calendar years prior to the current complaint. The juvenile and his parent or
68 parents, guardian, or other person standing in loco parentis must agree, in writing, for the development
69 of a truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents,
70 guardian, or other person standing in loco parentis participate in such programs, cooperate in such
71 treatment, or be subject to such conditions and limitations as necessary to ensure the juvenile's
72 compliance with compulsory school attendance as provided in § 22.1-254. The intake officer may refer
73 the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an
74 interagency interdisciplinary team approach. The team may include qualified personnel who are
75 reasonably available from the appropriate department of social services, community services board, local
76 school division, court service unit, and other appropriate and available public and private agencies and
77 may be the family assessment and planning team established pursuant to § 2.2-5207. If at the end of the
78 deferral period the juvenile has not successfully completed the truancy plan or the truancy program, then
79 the intake officer shall file the petition.

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

89 C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody,
90 visitation, or support of a child is the subject of controversy or requires determination, (ii) a person has
91 deserted, abandoned, or failed to provide support for any person in violation of law, (iii) a child or such
92 child's parent, guardian, legal custodian, or other person standing in loco parentis is entitled to treatment,
93 rehabilitation, or other services which are required by law, (iv) family abuse has occurred and a
94 protective order is being sought pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1, or (v) an act of
95 violence, force, or threat has occurred, a protective order is being sought pursuant to § 19.2-152.8,
96 19.2-152.9, or 19.2-152.10, and either the alleged victim or the respondent is a juvenile. If any such
97 complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to
98 be abused, neglected, in need of services, in need of supervision, or delinquent, if the intake officer
99 believes that probable cause does not exist, or that the authorization of a petition will not be in the best
100 interest of the family or juvenile or that the matter may be effectively dealt with by some agency other
101 than the court, he may refuse to authorize the filing of a petition. The intake officer shall provide to a
102 person seeking a protective order pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1 a written
103 explanation of the conditions, procedures and time limits applicable to the issuance of protective orders
104 pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1. If the person is seeking a protective order pursuant
105 to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, the intake officer shall provide a written explanation of the
106 conditions, procedures, and time limits applicable to the issuance of protective orders pursuant to
107 § 19.2-152.8, 19.2-152.9, or 19.2-152.10.

108 D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall
109 be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be
110 in need of supervision have utilized or attempted to utilize treatment and services available in the
111 community and have exhausted all appropriate nonjudicial remedies which are available to them. When
112 the intake officer determines that the parties have not attempted to utilize available treatment or services
113 or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the
114 petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility,
115 or individual to receive treatment or services, and a petition shall not be filed. Only after the intake
116 officer determines that the parties have made a reasonable effort to utilize available community
117 treatment or services may he permit the petition to be filed.

118 E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an
119 adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in
120 writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate
121 determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic

relations district court. The warrant shall be delivered forthwith to the juvenile 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 juvenile 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 juvenile court of a warrant issued pursuant to subdivision 2 of § 16.1-256, the intake officer shall accept and file a petition founded upon the warrant.

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.), 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.), 6.1 (§ 18.2-307.1 et seq.), or 7 (§ 18.2-308.1 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;

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

13. Abduction of any person pursuant to § 18.2-47 or 18.2-48; or

14. A threat pursuant to § 18.2-60.

The failure to provide information regarding the school in which the 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 misdemeanor violation of § 18.2-266, 18.2-266.1, or 29.1-738, or the commission of any other alcohol-related offense, or a violation of § 18.2-250.1, provided that 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, 16.1-278.8:01, 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. When a violation of § 4.1-305 or 18.2-250.1 is charged by summons, the juvenile shall be entitled to have the charge referred to intake

183 for consideration of informal proceedings pursuant to subsection B, provided that such right is exercised
184 by written notification to the clerk not later than 10 days prior to trial. At the time such summons
185 alleging a violation of § 4.1-305 or 18.2-250.1 is served, the officer shall also serve upon the juvenile
186 written notice of the right to have the charge referred to intake on a form approved by the Supreme
187 Court and make return of such service to the court. If the officer fails to make such service or return,
188 the court shall dismiss the summons without prejudice.

189 4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or
190 Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in
191 § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as
192 provided by law for adults provided that notice of the summons to appear is mailed by the investigating
193 officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

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

196 **§ 63.2-1903. Authority to issue certain orders; civil penalty.**

197 A. In the absence of a court order, the Department shall have the authority to issue orders directing
198 the payment of child and child and spousal support and, if available at reasonable cost as defined in
199 § 63.2-1900, to require a provision for health care coverage, including Department-sponsored health care
200 coverage, or cash medical support, or both, for dependent children of the parents, which shall include
201 the requirements specified for employers pursuant to subdivision B 5 of § 20-79.3. The Department shall
202 have the authority to make available Department-sponsored health care coverage for children receiving
203 child support services from the Department. If ~~health care coverage is unavailable at a reasonable cost,~~
204 ~~as defined in § 63.2-1900, or inaccessible to either parent, it appears that the gross income of the~~
205 ~~custodial parent of the dependent child is equal to or less than 200 percent of the federal poverty level~~
206 ~~promulgated by the U.S. Department of Health and Human Services from time to time,~~ the Department
207 shall refer the dependent ~~children~~ child to the Family Access to Medical Insurance Security plan
208 pursuant to § 32.1-351. However, prior to referring the dependent ~~children~~ child to the Family Access to
209 Medical Insurance Security plan, the Department shall confirm that neither parent has access to health
210 care coverage at a reasonable cost for the dependent ~~children~~ child. If a child is enrolled in
211 Department-sponsored health care coverage, the Department shall collect the cost of the coverage
212 pursuant to subsection E of § 20-108.2.

213 In ordering the payment of child support, the Department shall set such support at the amount
214 resulting from computation pursuant to the guideline set out in § 20-108.2, subject to the provisions of
215 § 63.2-1918.

216 B. When a payee no longer has physical custody of a child, the Department shall have the authority
217 to redirect child support payments to a custodial parent who has physical custody of the child when an
218 assignment of rights has been made to the Department or an application for services has been made by
219 such custodial parent with the Division of Child Support Enforcement.

220 C. The Department shall have the authority, upon notice from the Department of Medical Assistance
221 Services, to use any existing enforcement mechanisms provided by this chapter to collect the wages,
222 salary, or other employment income or to withhold amounts from state tax refunds of any obligor who
223 has not used payments received from a third party to reimburse, as appropriate, either the other parent of
224 such child or the provider of such services, to the extent necessary to reimburse the Department of
225 Medical Assistance Services.

226 D. The Department may order the obligor and payee to notify each other or the Department upon
227 request of current gross income as defined in § 20-108.2 and any other pertinent information that may
228 affect child support amounts. For good cause shown, the Department may order that such information be
229 provided to the Department and made available to the parties for inspection in lieu of the parties'
230 providing such information directly to each other. The Department shall record the social security
231 number of each party or control number issued to a party by the Department of Motor Vehicles pursuant
232 to § 46.2-342 in the Department's file of the case.

233 E. The Department shall develop procedures governing the method and timing of periodic review and
234 adjustment of child support orders established or enforced or both pursuant to Title IV-D of the Social
235 Security Act, as amended. If there is an assignment under Title IV-A of the Social Security Act or at
236 the request of either parent subject to the order, the Department shall initiate a review of such order
237 every three years without requiring proof or showing of a change in circumstances and shall initiate
238 appropriate action to adjust such order in accordance with the provisions of § 20-108.2 and subject to
239 the provisions of § 63.2-1918.

240 F. In order to provide essential information for whatever establishment or enforcement actions are
241 necessary for the collection of child support, the Commissioner, the Director of the Division of Child
242 Support Enforcement, and district managers of Division of Child Support Enforcement offices shall have
243 the right to (i) subpoena financial records of, or other information relating to, the noncustodial parent
244 and obligee from any person, firm, corporation, association, or political subdivision or department of the

245 Commonwealth and (ii) summons the noncustodial parent and obligee to appear in the Division's offices.
246 The Commissioner, Director, and district managers may also subpoena copies of state and federal
247 income tax returns. The district managers shall be trained in the correct use of the subpoena process
248 prior to exercising subpoena authority. A civil penalty not to exceed \$1,000 may be assessed by the
249 Commissioner for a failure to respond to a subpoena issued pursuant to this subsection.

250 G. In the absence of a court order, the Department may establish an administrative support order on
251 an out-of-state obligor pursuant to subdivision A 8 or 9 of § 8.01-328.1 or § 20-88.35. The Department
252 may also take action to enforce an administrative or court order on an out-of-state obligor. Service of
253 such actions shall be in accordance with the provisions of § 8.01-296, 8.01-327 or 8.01-329 or by
254 certified mail, return receipt requested, or electronic means in accordance with § 63.2-1917.

255 H. If a support order has been issued in another state but the obligor, the obligee, and the child now
256 live in the Commonwealth, the Department may (i) enforce the order without registration, using all
257 enforcement remedies available under this chapter, and (ii) register the order in the appropriate tribunal
258 of the Commonwealth for enforcement or modification.