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## HOUSE BILL NO. 2017

Offered January 13, 2021

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A *BILL to amend and reenact § 16.1-260 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2 of Chapter 11 of Title 16.1 a section numbered 16.1-240.1, relating to juvenile offenders; youth court programs.*

Patrons—Mullin, Coyner, Levine, Price, Simon and Simonds

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That § 16.1-260 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 2 of Chapter 11 of Title 16.1 a section numbered 16.1-240.1 as follows:**

**§ 16.1-240.1. Youth court programs.**

A. For the purposes of this section, "youth court program" means a diversionary program that (i) is monitored by a local youth court program advisory committee; (ii) uses juvenile volunteers as lawyers, jurors, and other court personnel; (iii) uses volunteer attorneys or judicial officers as judges; (iv) conducts peer trials, subject to the juvenile and domestic relations court's jurisdiction, of juveniles who are assigned to the program by the court; and (v) imposes various sentences emphasizing restitution, rehabilitation, accountability, competency building, and education, but not incarceration.

B. Any jurisdiction may establish a youth court program upon establishment of a local youth court program advisory committee and approval of the youth court program by the juvenile and domestic relations court that serves such jurisdiction. Each local youth court program advisory committee shall ensure quality, efficiency, and fairness in the planning, implementation, and operation of the youth court program that serves the jurisdiction. Advisory committee membership may include, but shall not be limited to, the following persons or their designees: (i) a judge from the juvenile and domestic relations court that serves such jurisdiction; (ii) the attorney for the Commonwealth; (iii) the public defender or a member of the local criminal defense bar in jurisdictions in which there is no public defender; (iv) the clerk of the court in which the youth court program is located; (v) a representative of the Department of Juvenile Justice from the local office that serves the jurisdiction; (vi) a local law-enforcement officer; (vii) a representative of a local school in such jurisdiction; (viii) a representative of juvenile court services; (ix) a representative of a juvenile detention center or group home; (x) a representative of a local children and family services agency; and (xi) any other persons selected by the local youth court program advisory committee.

C. Each local youth court program advisory committee shall establish criteria for the eligibility and participation of juveniles who have committed nonviolent offenses in the youth court program.

D. Each local youth court program advisory committee shall establish policies and procedures for the operation of the youth court program to attain the following goals: (i) early intervention in and prevention of delinquent behavior; (ii) providing positive alternative sanctions for nonviolent offenders by providing a peer-driven sentencing mechanism that allows young people to take responsibility, to be held accountable, and to make restitution; (iii) advocating for fair, constructive, and restorative sentences predicated on sensitivity to the unique needs and the diversity of the participating juveniles; and (iv) developing positive citizenship attitudes, encouraging civic engagement, and promoting educational success through a diversity of service learning opportunities, strategies, and activities.

E. A juvenile referred to a youth court program may be required to contribute to the cost of the program pursuant to guidelines developed by the local youth court program advisory committee.

**§ 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

59 clerk, on forms approved by the Supreme Court of Virginia, petitions for foster care review, petitions  
60 for permanency planning hearings, petitions to establish paternity, motions to establish or modify  
61 support, motions to amend or review an order, and motions for a rule to show cause; and (iv) any  
62 attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject  
63 of the petition is a child alleged to be in need of services, in need of supervision, or delinquent.  
64 Complaints alleging abuse or neglect of a child shall be referred initially to the local department of  
65 social services in accordance with the provisions of Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2.  
66 Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake  
67 officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is  
68 receiving child support services or public assistance. No individual who is receiving support services or  
69 public assistance shall be denied the right to file a petition or motion to establish, modify, or enforce an  
70 order for support of a child. If the petitioner is seeking or receiving child support services or public  
71 assistance, the clerk, upon issuance of process, shall forward a copy of the petition or motion, together  
72 with notice of the court date, to the Division of Child Support Enforcement.

73 B. The appearance of a child before an intake officer may be by (i) personal appearance before the  
74 intake officer or (ii) use of two-way electronic video and audio communication. If two-way electronic  
75 video and audio communication is used, an intake officer may exercise all powers conferred by law. All  
76 communications and proceedings shall be conducted in the same manner as if the appearance were in  
77 person, and any documents filed may be transmitted by facsimile process. The facsimile may be served  
78 or executed by the officer or person to whom sent, and returned in the same manner, and with the same  
79 force, effect, authority, and liability as an original document. All signatures thereon shall be treated as  
80 original signatures. Any two-way electronic video and audio communication system used for an  
81 appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

82 When the court service unit of any court receives a complaint alleging facts which may be sufficient  
83 to invoke the jurisdiction of the court pursuant to § 16.1-241, the unit, through an intake officer, may  
84 proceed informally to make such adjustment as is practicable without the filing of a petition or may  
85 authorize a petition to be filed by any complainant having sufficient knowledge of the matter to  
86 establish probable cause for the issuance of the petition.

87 An intake officer may proceed informally on a complaint alleging a child is in need of services, in  
88 need of supervision, or delinquent only if the juvenile (a) is not alleged to have committed a violent  
89 juvenile felony or (b) has not previously been proceeded against informally or adjudicated delinquent for  
90 an offense that would be a felony if committed by an adult. A petition alleging that a juvenile  
91 committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is  
92 delinquent for an offense that would be a felony if committed by an adult shall be filed with the court if  
93 the juvenile had previously been proceeded against informally by intake or had been adjudicated  
94 delinquent for an offense that would be a felony if committed by an adult.

95 If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and  
96 the attendance officer has provided documentation to the intake officer that the relevant school division  
97 has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with the  
98 court. The intake officer may defer filing the petition and proceed informally by developing a truancy  
99 plan, provided that (1) the juvenile has not previously been proceeded against informally or adjudicated  
100 in need of supervision on more than two occasions for failure to comply with compulsory school  
101 attendance as provided in § 22.1-254 and (2) the immediately previous informal action or adjudication  
102 occurred at least three calendar years prior to the current complaint. The juvenile and his parent or  
103 parents, guardian, or other person standing in loco parentis must agree, in writing, for the development  
104 of a truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents,  
105 guardian, or other person standing in loco parentis participate in such programs, cooperate in such  
106 treatment, or be subject to such conditions and limitations as necessary to ensure the juvenile's  
107 compliance with compulsory school attendance as provided in § 22.1-254. The intake officer may refer  
108 the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an  
109 interagency interdisciplinary team approach. The team may include qualified personnel who are  
110 reasonably available from the appropriate department of social services, community services board, local  
111 school division, court service unit, and other appropriate and available public and private agencies and  
112 may be the family assessment and planning team established pursuant to § 2.2-5207. If at the end of the  
113 deferral period the juvenile has not successfully completed the truancy plan or the truancy program, then  
114 the intake officer shall file the petition.

115 Whenever informal action is taken as provided in this subsection on a complaint alleging that a child  
116 is in need of services, in need of supervision, or delinquent, the intake officer shall (A) develop a plan  
117 for the juvenile, which may include *referral to a youth court program established pursuant to*  
118 *§ 16.1-240.1*, restitution ~~and~~, or the performance of community service, based upon community resources  
119 and the circumstances which resulted in the complaint, (B) create an official record of the action taken  
120 by the intake officer and file such record in the juvenile's case file, and (C) advise the juvenile and the

juvenile's parent, guardian, or other person standing in loco parentis and the complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241, *or in the case of a referral to a youth court program established pursuant to § 16.1-240.1, that any subsequent report from the youth court program alleging that the juvenile failed to comply with the youth court program's sentence within 180 days of the sentencing date*, may result in the filing of a petition with the court.

C. 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, (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, (iv) family abuse has occurred and a 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 violence, force, or threat has occurred, a protective order is being sought pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, and either the alleged victim or the respondent is a juvenile. 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 juvenile 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. The intake officer shall provide to a person seeking a protective order pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1 a written explanation of the conditions, procedures and time limits applicable to the issuance of protective orders pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1. If the person is seeking a protective order pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, the intake officer shall provide a written explanation of the conditions, procedures, and time limits applicable to the issuance of protective orders pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10.

D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall be reviewed by an intake officer who shall determine whether the petitioner and the child 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.

E. 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 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;

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

184 6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter  
185 7 of Title 18.2;

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

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

188 9. Robbery pursuant to § 18.2-58;

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

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

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

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

193 14. A threat pursuant to § 18.2-60.

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

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

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

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

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

208 3. In the case of a misdemeanor violation of § 18.2-266, 18.2-266.1, or 29.1-738, or the commission  
209 of any other alcohol-related offense, or a violation of § 18.2-250.1, provided that the juvenile is released  
210 to the custody of a parent or legal guardian pending the initial court date. The officer releasing a  
211 juvenile to the custody of a parent or legal guardian shall issue a summons to the juvenile and shall also  
212 issue a summons requiring the parent or legal guardian to appear before the court with the juvenile.  
213 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.  
214 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  
215 refuses to provide a sample of blood or breath or samples of both blood and breath for chemical  
216 analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or 29.1-738.2, the provisions of these sections  
217 shall be followed except that the magistrate shall authorize execution of the warrant as a summons. The  
218 summons shall be served on a parent or legal guardian and the juvenile, and a copy of the summons  
219 shall be forwarded to the court in which the violation is to be tried. When a violation of § 4.1-305 or  
220 18.2-250.1 is charged by summons, the juvenile shall be entitled to have the charge referred to intake  
221 for consideration of informal proceedings pursuant to subsection B, provided that such right is exercised  
222 by written notification to the clerk not later than 10 days prior to trial. At the time such summons  
223 alleging a violation of § 4.1-305 or 18.2-250.1 is served, the officer shall also serve upon the juvenile  
224 written notice of the right to have the charge referred to intake on a form approved by the Supreme  
225 Court and make return of such service to the court. If the officer fails to make such service or return,  
226 the court shall dismiss the summons without prejudice.

227 4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or  
228 Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in  
229 § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as  
230 provided by law for adults provided that notice of the summons to appear is mailed by the investigating  
231 officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

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