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SENATE BILL NO. 360

Senate Amendments in [] — January 13, 1995

A *BILL to amend and reenact § 16.1-260, as currently effective and as may become effective, of the Code of Virginia, relating to issuance of summonses for offenses by juveniles.*

Patrons—Cross, Goode and Robb; Delegates: Almand, Ball, Copeland, Cunningham, Reynolds and Woodrum

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-260, as currently effective and as may become effective, of the Code of Virginia is 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 F 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. 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. 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 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.

D. 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

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60 writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate
61 determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic
62 relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake
63 officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate
64 finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the child
65 may be detained pursuant to the warrant issued in accordance with this subsection. If the intake officer
66 refuses to authorize a petition relating to a child in need of services or in need of supervision, a status
67 offense, or a misdemeanor other than Class 1, his decision is final.

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

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

72 F. The filing of a petition shall not be necessary:

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

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

82 3. In the case of a violation of § 18.2-266 or § 29.1-738, or the commission of any other
83 alcohol-related offense, provided the child is released to the custody of a parent or legal guardian
84 pending the initial court date. The officer releasing a child to the custody of a parent or legal guardian
85 shall issue a summons to the child and shall also issue a summons requiring the parent or legal guardian
86 to appear before the court with the child. Disposition of the charge shall be in the manner provided in
87 § 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
88 to provide a sample of blood or breath or samples of both blood and breath for chemical analysis
89 pursuant to §§ 18.2-268.1 through 18.2-268.12 or § 29.1-738.2, the provisions of these sections shall be
90 followed except that the magistrate shall authorize execution of the warrant as a summons. The
91 summons shall be served on a parent or legal guardian and the child, and a copy of the summons shall
92 be forwarded to the court in which the violation of § 18.2-266 or § 29.1-738 is to be tried.

93 4. *In the case of offenses [which, if committed by an adult would be] punishable as Class 3 or*
94 *Class 4 misdemeanors. In such cases the court may proceed on a summons issued by the officer*
95 *investigating the violation in the same manner as provided by law for adults [provided that notice of*
96 *the summons to appear is mailed by the investigating officer within five days of the issuance of the*
97 *summons to a parent or legal guardian of the juvenile and to the intake officer of the court] .*

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

100 § 16.1-260. (Delayed effective date - See notes) Intake; petition; investigation.

101 A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of
102 a petition, except as provided in subsection F of this section and in § 16.1-259. The form and content of
103 the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services
104 from the Department of Social Services prior to filing a petition seeking support for a child. Complaints,
105 requests and the processing of petitions to initiate a case shall be the responsibility of the intake officer.
106 However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own
107 motion with the clerk, (ii) the Department of Social Services may file support petitions on its own
108 motion with the clerk, and (iii) any attorney may file petitions on behalf of his client with the clerk
109 except petitions alleging that the subject of the petition is a child alleged to be in need of services, in
110 need of supervision or delinquent. In addition, all cases for divorce, annulment or affirmation of
111 marriage, separate maintenance, equitable distribution based on a foreign decree, adoption, change of
112 name, amendment of a record of birth and judicial review of school board actions and of hearing officer
113 decisions shall be filed directly with the clerk. Complaints alleging abuse or neglect of a child shall be
114 referred initially to the local department of public welfare or social services in accordance with the
115 provisions of Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1. Motions and other subsequent pleadings
116 in a case shall be filed directly with the clerk. The intake officer or clerk with whom the petition or
117 motion is filed shall inquire whether the petitioner is receiving child support services or public
118 assistance. No individual who is receiving support services or public assistance shall be denied the right
119 to file a petition or motion to establish, modify or enforce an order for support of a child. If the
120 petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance of
121 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. 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 or separate maintenance 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. 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 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.

D. If the intake officer refuses to authorize a petition relating to an offense which 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 family court. The warrant shall be delivered forthwith to the family 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 child 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 family court of a warrant issued pursuant to subdivision 3 of § 16.1-256, the intake officer shall accept and file a petition founded upon the warrant.

E. 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.

F. 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 child is released to the custody of a parent or legal guardian pending the initial court date. The officer releasing a child to the custody of a parent or legal guardian shall issue a summons to the child and shall also issue a summons requiring the parent or legal guardian to appear before the court with the child. Disposition of the charge shall be in the manner provided in § 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 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 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.

183 4. In cases of divorce, annulment or affirmation of marriage, separate maintenance, equitable
184 distribution based on a foreign decree, and judicial review of school board actions and of hearing officer
185 decisions.

186 5. *In the case of offenses [which, if committed by an adult would be] punishable as Class 3 or*
187 *Class 4 misdemeanors. In such cases the court may proceed on a summons issued by the officer*
188 *investigating the violation in the same manner as provided by law for adults [provided that notice of*
189 *the summons to appear is mailed by the investigating officer within five days of the issuance of the*
190 *summons to a parent or legal guardian of the juvenile and to the intake officer of the court] .*

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