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HOUSE BILL NO. 274

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for _____

on _____)

(Patron Prior to Substitute--Delegate Ward)

A BILL to amend and reenact § 16.1-260 of the Code of Virginia, relating to informal truancy plans.

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-260 of the Code of Virginia is 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

27 filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed shall
28 inquire whether the petitioner is receiving child support services or public assistance. No individual who
29 is receiving support services or public assistance shall be denied the right to file a petition or motion to
30 establish, modify, or enforce an order for support of a child. If the petitioner is seeking or receiving child
31 support services or public assistance, the clerk, upon issuance of process, shall forward a copy of the
32 petition or motion, together with notice of the court date, to the Division of Child Support Enforcement.

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

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

47 An intake officer may proceed informally on a complaint alleging a child is in need of services, in
48 need of supervision, or delinquent only if the juvenile (i) is not alleged to have committed a violent
49 juvenile felony or (ii) has not previously been proceeded against informally or adjudicated delinquent for
50 an offense that would be a felony if committed by an adult. A petition alleging that a juvenile committed
51 a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is delinquent for
52 an offense that would be a felony if committed by an adult shall be filed with the court if the juvenile had

53 previously been proceeded against informally by intake or had been adjudicated delinquent for an offense
54 that would be a felony if committed by an adult.

55 If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258
56 and the attendance officer has provided documentation to the intake officer that the relevant school
57 division has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with
58 the court. The intake officer may defer filing the complaint for 90 days and proceed informally by
59 developing a truancy plan. ~~The intake officer may proceed informally only if,~~ provided that (a) the juvenile
60 has not previously been proceeded against informally or adjudicated in need of supervision on more than
61 two occasions for failure to comply with compulsory school attendance as provided in § 22.1-254 and (b)
62 the immediately previous informal action or adjudication occurred at least three calendar years prior to
63 the current complaint. The juvenile and his parent or parents, guardian, or other person standing in loco
64 parentis must agree, in writing, for the development of a truancy plan. The truancy plan may include
65 requirements that the juvenile and his parent or parents, guardian, or other person standing in loco parentis
66 participate in such programs, cooperate in such treatment, or be subject to such conditions and limitations
67 as necessary to ensure the juvenile's compliance with compulsory school attendance as provided in § 22.1-
68 254. The intake officer may refer the juvenile to the appropriate public agency for the purpose of
69 developing a truancy plan using an interagency interdisciplinary team approach. The team may include
70 qualified personnel who are reasonably available from the appropriate department of social services,
71 community services board, local school division, court service unit, and other appropriate and available
72 public and private agencies and may be the family assessment and planning team established pursuant to
73 § 2.2-5207. If at the end of the 90-day period the juvenile has not successfully completed the truancy plan
74 or the truancy program, then the intake officer shall file the petition.

75 Whenever informal action is taken as provided in this subsection on a complaint alleging that a
76 child is in need of services, in need of supervision, or delinquent, the intake officer shall ~~(i)~~ (1) develop a
77 plan for the juvenile, which may include restitution and the performance of community service, based
78 upon community resources and the circumstances which resulted in the complaint, ~~(ii)~~ (2) create an official
79 record of the action taken by the intake officer and file such record in the juvenile's case file, and ~~(iii)~~ (3)

80 advise 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, (iv) family abuse has occurred and a protective
89 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,
90 or threat has occurred, a protective order is being sought pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-
91 152.10, and either the alleged victim or the respondent is a juvenile. If any such complainant does not file
92 a petition, the intake officer may file it. In cases in which a child is alleged to be abused, neglected, in
93 need of services, in need of supervision, or delinquent, if the intake officer believes that probable cause
94 does not exist, or that the authorization of a petition will not be in the best interest of the family or juvenile
95 or that the matter may be effectively dealt with by some agency other than the court, he may refuse to
96 authorize the filing of a petition. The intake officer shall provide to a person seeking a protective order
97 pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1 a written explanation of the conditions, procedures
98 and time limits applicable to the issuance of protective orders pursuant to § 16.1-253.1, 16.1-253.4, or
99 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-
100 152.10, the intake officer shall provide a written explanation of the conditions, procedures, and time limits
101 applicable to the issuance of protective orders pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10.

102 D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall
103 be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be in
104 need of supervision have utilized or attempted to utilize treatment and services available in the community
105 and have exhausted all appropriate nonjudicial remedies which are available to them. When the intake
106 officer determines that the parties have not attempted to utilize available treatment or services or have not

107 exhausted all appropriate nonjudicial remedies which are available, he shall refer the petitioner and the
108 child alleged to be in need of supervision to the appropriate agency, treatment facility, or individual to
109 receive treatment or services, and a petition shall not be filed. Only after the intake officer determines that
110 the parties have made a reasonable effort to utilize available community treatment or services may he
111 permit the petition to be filed.

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

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

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

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

132 1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-
133 299 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;

- 134 2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;
- 135 3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of
- 136 Title 18.2;
- 137 4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;
- 138 5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances,
- 139 pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;
- 140 6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of
- 141 Chapter 7 of Title 18.2;
- 142 7. Arson and related crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2;
- 143 8. Burglary and related offenses, pursuant to §§ 18.2-89 through 18.2-93;
- 144 9. Robbery pursuant to § 18.2-58;
- 145 10. Prohibited criminal street gang activity pursuant to § 18.2-46.2;
- 146 11. Recruitment of other juveniles for a criminal street gang activity pursuant to § 18.2-46.3; or
- 147 12. An act of violence by a mob pursuant to § 18.2-42.1.

148 The failure to provide information regarding the school in which the student who is the subject of

149 the petition may be enrolled shall not be grounds for refusing to file a petition.

150 The information provided to a division superintendent pursuant to this section may be disclosed

151 only as provided in § 16.1-305.2.

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

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

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

162 3. In the case of a misdemeanor violation of § 18.2-250.1, 18.2-266, 18.2-266.1, or 29.1-738, or
163 the commission of any other alcohol-related offense, provided the juvenile is released to the custody of a
164 parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of a
165 parent or legal guardian shall issue a summons to the juvenile and shall also issue a summons requiring
166 the parent or legal guardian to appear before the court with the juvenile. Disposition of the charge shall be
167 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
168 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
169 or breath or samples of both blood and breath for chemical analysis pursuant to §§ 18.2-268.1 through
170 18.2-268.12 or 29.1-738.2, the provisions of these sections shall be followed except that the magistrate
171 shall authorize execution of the warrant as a summons. The summons shall be served on a parent or legal
172 guardian and the juvenile, and a copy of the summons shall be forwarded to the court in which the violation
173 is to be tried. When a violation of § 18.2-250.1 is charged by summons, the juvenile shall be entitled to
174 have the charge referred to intake for consideration of informal proceedings pursuant to subsection B,
175 provided such right is exercised by written notification to the clerk not later than 10 days prior to trial. At
176 the time such summons alleging a violation of § 18.2-250.1 is served, the officer shall also serve upon the
177 juvenile written notice of the right to have the charge referred to intake on a form approved by the Supreme
178 Court and make return of such service to the court. If the officer fails to make such service or return, the
179 court shall dismiss the summons without prejudice.

180 4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or
181 Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in §
182 16.1-237 on a summons issued by the officer investigating the violation in the same manner as provided
183 by law for adults provided that notice of the summons to appear is mailed by the investigating officer
184 within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

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

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