

HOUSE BILL NO. 470

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Martinez)

A BILL to amend and reenact § 16.1-260 of the Code of Virginia, relating to petition for child in need of services or in need of supervision.

**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

27 Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2. Motions and other subsequent pleadings in a case shall be  
28 filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed shall  
29 inquire whether the petitioner is receiving child support services or public assistance. No individual who  
30 is receiving support services or public assistance shall be denied the right to file a petition or motion to  
31 establish, modify, or enforce an order for support of a child. If the petitioner is seeking or receiving child  
32 support services or public assistance, the clerk, upon issuance of process, shall forward a copy of the  
33 petition or motion, together with notice of the court date, to the Division of Child Support Enforcement.  
34 If a petitioner is seeking to establish child support, the intake officer shall provide the petitioner  
35 information on the possible availability of medical assistance through the Family Access to Medical  
36 Insurance Security (FAMIS) plan or other government-sponsored coverage through the Department of  
37 Medical Assistance Services.

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

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

52 An intake officer may proceed informally on a complaint alleging a child is in need of services, in  
53 need of supervision, or delinquent only if the juvenile (a) is not alleged to have committed a violent

54 juvenile felony or (b) has not previously been proceeded against informally or adjudicated delinquent for  
55 an offense that would be a felony if committed by an adult. A petition alleging that a juvenile committed  
56 a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is delinquent for  
57 an offense that would be a felony if committed by an adult shall be filed with the court if the juvenile had  
58 previously been proceeded against informally by intake or had been adjudicated delinquent for an offense  
59 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  
61 and the attendance officer has provided documentation to the intake officer that the relevant school  
62 division has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with  
63 the 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 parents,  
68 guardian, or other person standing in loco parentis must agree, in writing, for the development of a truancy  
69 plan. The truancy plan may include requirements that the juvenile and his parent or parents, guardian, or  
70 other person standing in loco parentis participate in such programs, cooperate in such treatment, or be  
71 subject to such conditions and limitations as necessary to ensure the juvenile's compliance with  
72 compulsory school attendance as provided in § 22.1-254. The intake officer may refer the juvenile to the  
73 appropriate public agency for the purpose of developing a truancy plan using an interagency  
74 interdisciplinary team approach. The team may include qualified personnel who are reasonably available  
75 from the appropriate department of social services, community services board, local school division, court  
76 service unit, and other appropriate and available public and private agencies and may be the family  
77 assessment and planning team established pursuant to § 2.2-5207. If at the end of the deferral period the  
78 juvenile has not successfully completed the truancy plan or the truancy program, then the intake officer  
79 shall file the petition.

80 Whenever informal action is taken as provided in this subsection on a complaint alleging that a  
81 child is in need of services, in need of supervision, or delinquent, the intake officer shall (A) develop a  
82 plan for the juvenile, which may include restitution, the performance of community service, or on a  
83 complaint alleging that a child has committed a delinquent act other than an act that would be a felony or  
84 a Class 1 misdemeanor if committed by an adult and with the consent of the juvenile's parent or legal  
85 guardian, referral to a youth justice diversion program established pursuant to § 16.1-309.11, based upon  
86 community resources and the circumstances which resulted in the complaint, (B) create an official record  
87 of the action taken by the intake officer and file such record in the juvenile's case file, and (C) advise the  
88 juvenile and the juvenile's parent, guardian, or other person standing in loco parentis and the complainant  
89 that any subsequent complaint alleging that the child is in need of supervision or delinquent based upon  
90 facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241, or in the case  
91 of a referral to a youth justice diversion program established pursuant to § 16.1-309.11, that any  
92 subsequent report from the youth justice diversion program alleging that the juvenile failed to comply  
93 with the youth justice diversion program's sentence within 180 days of the sentencing date, may result in  
94 the filing of a petition with the court.

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

107 authorize the filing of a petition. The intake officer shall provide to a person seeking a protective order  
108 pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1 a written explanation of the conditions, procedures  
109 and time limits applicable to the issuance of protective orders pursuant to § 16.1-253.1, 16.1-253.4, or  
110 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-  
111 152.10, the intake officer shall provide a written explanation of the conditions, procedures, and time limits  
112 applicable to the issuance of protective orders pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10.

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

123 E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an  
124 adult would be punishable as a Class 1 misdemeanor or as a felony, when such refusal is based solely  
125 upon a finding that no probable cause exists, the complainant shall be notified in writing at that time of  
126 the complainant's right to apply to a magistrate for a warrant. The application for a warrant to the  
127 magistrate shall be filed within 10 days of the issuance of the written notification. The written notification  
128 shall indicate that the intake officer made a finding that no probable cause exists and shall provide notice  
129 that the complainant has 10 days to apply for a warrant to the magistrate. The complainant shall provide  
130 the magistrate with a copy of the written notification upon application to the magistrate. If a magistrate  
131 determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic  
132 relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake officer  
133 shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate finds

134 that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the juvenile may  
135 be detained pursuant to the warrant issued in accordance with this subsection. If the intake officer refuses  
136 to authorize a petition relating to ~~a child in need of services or in need of supervision~~, a status offense, or  
137 a misdemeanor other than Class 1, his decision is final. If the intake officer refuses to authorize a petition  
138 relating to a child in need of services or in need of supervision, the child's parent, guardian, or other person  
139 standing in loco parentis may file such petition relating to a child in need of services or in need of  
140 supervision with the clerk of the juvenile and domestic relations district court. If the intake officer refuses  
141 to authorize a petition relating to an offense that if committed by an adult would be punishable as a Class  
142 1 misdemeanor or as a felony when such refusal is based upon a finding that (i) probable cause exists, but  
143 that (ii) the matter is appropriate for diversion, his decision is final and the complainant shall not have a  
144 right to apply to a magistrate for a warrant.

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

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

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

- 155           1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-  
156 299 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;
- 157           2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;
- 158           3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of  
159 Title 18.2;
- 160           4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

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

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

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

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

167 9. Robbery pursuant to § 18.2-58;

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

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

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

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

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

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

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

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

178 1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking  
179 and other pedestrian offenses, game and fish laws, or a violation of the ordinance of any city regulating  
180 surfing or any ordinance establishing curfew violations, animal control violations, or littering violations.

181 In such cases the court may proceed on a summons issued by the officer investigating the violation in the  
182 same manner as provided by law for adults. Additionally, an officer investigating a motor vehicle accident  
183 may, at the scene of the accident or at any other location where a juvenile who is involved in such an  
184 accident may be located, proceed on a summons in lieu of filing a petition.

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

