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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;~~ and (v) any attorney or guardian ad litem for a child may file petitions for such child alleging he is in need of services or in need of supervision.

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

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

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

53 An intake officer may proceed informally on a complaint alleging a child is in need of services, in  
54 need of supervision, or delinquent only if the juvenile (a) is not alleged to have committed a violent  
55 juvenile felony or (b) has not previously been proceeded against informally or adjudicated delinquent for  
56 an offense that would be a felony if committed by an adult. A petition alleging that a juvenile committed  
57 a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is delinquent for  
58 an offense that would be a felony if committed by an adult shall be filed with the court if the juvenile had  
59 previously been proceeded against informally by intake or had been adjudicated delinquent for an offense  
60 that would be a felony if committed by an adult.

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

79 juvenile has not successfully completed the truancy plan or the truancy program, then the intake officer  
80 shall file the petition.

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

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

106 does not exist, or that the authorization of a petition will not be in the best interest of the family or juvenile  
107 or that the matter may be effectively dealt with by some agency other than the court, he may refuse to  
108 authorize the filing of a petition. If the intake officer refuses to file a petition alleging that a child is in  
109 need of services or in need of supervision when such petition is sought by the parent or legal guardian of  
110 such child, he shall provide a written explanation that details the reasons for such refusal and shall provide  
111 information to such parent or legal guardian regarding any agency other than the court that can provide  
112 services for such child. The intake officer shall provide to a person seeking a protective order pursuant to  
113 § 16.1-253.1, 16.1-253.4, or 16.1-279.1 a written explanation of the conditions, procedures and time limits  
114 applicable to the issuance of protective orders pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1. If the  
115 person is seeking a protective order pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, the intake officer  
116 shall provide a written explanation of the conditions, procedures, and time limits applicable to the issuance  
117 of protective orders pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10.

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

128 E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an  
129 adult would be punishable as a Class 1 misdemeanor or as a felony, when such refusal is based solely  
130 upon a finding that no probable cause exists, the complainant shall be notified in writing at that time of  
131 the complainant's right to apply to a magistrate for a warrant. The application for a warrant to the  
132 magistrate shall be filed within 10 days of the issuance of the written notification. The written notification

133 shall indicate that the intake officer made a finding that no probable cause exists and shall provide notice  
134 that the complainant has 10 days to apply for a warrant to the magistrate. The complainant shall provide  
135 the magistrate with a copy of the written notification upon application to the magistrate. If a magistrate  
136 determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic  
137 relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake officer  
138 shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate finds  
139 that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the juvenile may  
140 be detained pursuant to the warrant issued in accordance with this subsection. If the intake officer refuses  
141 to authorize a petition relating to a child in need of services or in need of supervision, a status offense, or  
142 a misdemeanor other than Class 1, his decision is final. If the intake officer refuses to authorize a petition  
143 relating to an offense that if committed by an adult would be punishable as a Class 1 misdemeanor or as  
144 a felony when such refusal is based upon a finding that (i) probable cause exists, but that (ii) the matter is  
145 appropriate for diversion, his decision is final and the complainant shall not have a right to apply to a  
146 magistrate for a warrant.

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

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

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

157       1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-  
158 299 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;

159       2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

160 3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of  
161 Title 18.2;

162 4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

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

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

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

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

169 9. Robbery pursuant to § 18.2-58;

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

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

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

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

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

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

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

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

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

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

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

189           3. In the case of a misdemeanor violation of § 18.2-266, 18.2-266.1, or 29.1-738 or the commission  
190 of any other alcohol-related offense, provided that the juvenile is released to the custody of a parent or  
191 legal guardian pending the initial court date. The officer releasing a juvenile to the custody of a parent or  
192 legal guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent  
193 or legal guardian to appear before the court with the juvenile. Disposition of the charge shall be in the  
194 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  
195 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  
196 or samples of both blood and breath for chemical analysis pursuant to §§ 18.2-268.1 through 18.2-268.12  
197 or 29.1-738.2, the provisions of these sections shall be followed except that the magistrate shall authorize  
198 execution of the warrant as a summons. The summons shall be served on a parent or legal guardian and  
199 the juvenile, and a copy of the summons shall be forwarded to the court in which the violation is to be  
200 tried. When a violation of § 4.1-305 is charged by summons, the juvenile shall be entitled to have the  
201 charge referred to intake for consideration of informal proceedings pursuant to subsection B, provided  
202 that such right is exercised by written notification to the clerk not later than 10 days prior to trial. At the  
203 time such summons alleging a violation of § 4.1-305 is served, the officer shall also serve upon the juvenile  
204 written notice of the right to have the charge referred to intake on a form approved by the Supreme Court  
205 and make return of such service to the court. If the officer fails to make such service or return, the court  
206 shall dismiss the summons without prejudice.

207           4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or  
208 Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in §  
209 16.1-237 on a summons issued by the officer investigating the violation in the same manner as provided  
210 by law for adults provided that notice of the summons to appear is mailed by the investigating officer  
211 within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

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



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