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## SENATE BILL NO. 1331

Offered January 13, 2025

Prefiled January 13, 2025

*A BILL to amend and reenact § 16.1-260 of the Code of Virginia, relating to juvenile and domestic relations district court; juvenile intake; school notification.*

Patron—Marsden

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 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 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. If a petitioner is seeking to establish child support, the intake officer shall provide the petitioner information on the possible availability of medical assistance through the Family Access to Medical Insurance Security (FAMIS) plan or other government-sponsored coverage through the Department of Medical Assistance Services.

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

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.

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

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SB1331

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

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

94 C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody, visitation, or  
95 support of a child is the subject of controversy or requires determination, (ii) a person has deserted,  
96 abandoned, or failed to provide support for any person in violation of law, (iii) a child or such child's parent,  
97 guardian, legal custodian, or other person standing in loco parentis is entitled to treatment, rehabilitation, or  
98 other services which are required by law, (iv) family abuse has occurred and a protective order is being  
99 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  
100 occurred, a protective order is being sought pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, and either  
101 the alleged victim or the respondent is a juvenile. If any such complainant does not file a petition, the intake  
102 officer may file it. In cases in which a child is alleged to be abused, neglected, in need of services, in need of  
103 supervision, or delinquent, if the intake officer believes that probable cause does not exist, or that the  
104 authorization of a petition will not be in the best interest of the family or juvenile or that the matter may be  
105 effectively dealt with by some agency other than the court, he may refuse to authorize the filing of a petition.  
106 The intake officer shall provide to a person seeking a protective order pursuant to § 16.1-253.1, 16.1-253.4,  
107 or 16.1-279.1 a written explanation of the conditions, procedures and time limits applicable to the issuance of  
108 protective orders pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1. If the person is seeking a protective  
109 order pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, the intake officer shall provide a written  
110 explanation of the conditions, procedures, and time limits applicable to the issuance of protective orders  
111 pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10.

112 D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall be  
113 reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be in need  
114 of supervision have utilized or attempted to utilize treatment and services available in the community and  
115 have exhausted all appropriate nonjudicial remedies which are available to them. When the intake officer  
116 determines that the parties have not attempted to utilize available treatment or services or have not exhausted  
117 all appropriate nonjudicial remedies which are available, he shall refer the petitioner and the child alleged to  
118 be in need of supervision to the appropriate agency, treatment facility, or individual to receive treatment or  
119 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, when such refusal is based solely upon a finding that no probable cause exists, the complainant shall be notified in writing at that time of the complainant's right to apply to a magistrate for a warrant. The application for a warrant to the magistrate shall be filed within 10 days of the issuance of the written notification. The written notification shall indicate that the intake officer made a finding that no probable cause exists and shall provide notice that the complainant has 10 days to apply for a warrant to the magistrate. The complainant shall provide the magistrate with a copy of the written notification upon application to the magistrate. 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. 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 when such refusal is based upon a finding that (i) probable cause exists, but that (ii) the matter is appropriate for diversion, his decision is final and the complainant shall not have a right to apply to a magistrate for a warrant.

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;

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

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

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

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

9. Robbery pursuant to § 18.2-58;

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

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

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

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

14. A threat pursuant to § 18.2-60;

15. *Carjacking pursuant to § 18.2-58.1; or*

16. *Sexual extortion pursuant to § 18.2-59.1.*

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

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

H. 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, animal control violations, or littering 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 subsection H of §

182 16.1-241.

183 3. In the case of a misdemeanor violation of § 18.2-266, 18.2-266.1, or 29.1-738 or the commission of any  
184 other alcohol-related offense, provided that the juvenile is released to the custody of a parent or legal  
185 guardian pending the initial court date. The officer releasing a juvenile to the custody of a parent or legal  
186 guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or legal  
187 guardian to appear before the court with the juvenile. Disposition of the charge shall be in the manner  
188 provided in § 16.1-278.8, 16.1-278.8:01, or 16.1-278.9. If the juvenile so charged with a violation of §  
189 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 or  
190 samples of both blood and breath for chemical analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or  
191 29.1-738.2, the provisions of these sections shall be followed except that the magistrate shall authorize  
192 execution of the warrant as a summons. The summons shall be served on a parent or legal guardian and the  
193 juvenile, and a copy of the summons shall be forwarded to the court in which the violation is to be tried.  
194 When a violation of § 4.1-305 is charged by summons, the juvenile shall be entitled to have the charge  
195 referred to intake for consideration of informal proceedings pursuant to subsection B, provided that such right  
196 is exercised by written notification to the clerk not later than 10 days prior to trial. At the time such summons  
197 alleging a violation of § 4.1-305 is served, the officer shall also serve upon the juvenile written notice of the  
198 right to have the charge referred to intake on a form approved by the Supreme Court and make return of such  
199 service to the court. If the officer fails to make such service or return, the court shall dismiss the summons  
200 without prejudice.

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

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