

HOUSE BILL NO. 438

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute—Delegate LeVere Bolling)

A BILL to amend and reenact §§ 16.1-260 and 16.1-306 of the Code of Virginia and to amend the Code of Virginia by adding in Article 8 of Chapter 11 of Title 16.1 a section numbered 16.1-277.3, relating to delinquency petition; referral to court service unit.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-260 and 16.1-306 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 8 of Chapter 11 of Title 16.1 a section numbered 16.1-277.3 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. 1. 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.

2. a. 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.

b. 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)~~ (i) is not alleged to have committed a violent juvenile felony or ~~(b)~~ (ii) 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 against informally by intake~~ or had been adjudicated delinquent for an offense that would be a felony if committed by an adult.

3. If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and the attendance officer has provided documentation to the intake officer that the relevant school division has

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

81 4. Whenever informal action is taken as provided in this subsection on a complaint alleging that a child is
82 in need of services, in need of supervision, or delinquent, the intake officer shall ~~(A)~~ (i) develop a plan for the
83 juvenile, which may include restitution, the performance of community service, or on a complaint alleging
84 that a child has committed a delinquent act ~~other than an act~~ that would be a felony or a Class 1 misdemeanor
85 if committed by an adult and with the consent of the juvenile's parent or legal guardian, referral to a youth
86 justice diversion program established pursuant to § 16.1-309.11, based upon community resources and the
87 circumstances which resulted in the complaint, ~~(B)~~ (ii) create an official record of the action taken by the
88 intake officer and file such record in the juvenile's case file, and ~~(C)~~ (iii) advise the juvenile and the juvenile's
89 parent, guardian, or other person standing in loco parentis and the complainant that any subsequent complaint
90 alleging that the child is in need of supervision or delinquent based upon facts which may be sufficient to
91 invoke the jurisdiction of the court pursuant to § 16.1-241, or in the case of a referral to a youth justice
92 diversion program established pursuant to § 16.1-309.11, that any subsequent report from the youth justice
93 diversion program alleging that the juvenile failed to comply with the youth justice diversion program's
94 sentence within 180 days of the sentencing date, may result in 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, visitation, or
96 support of a child is the subject of controversy or requires determination, (ii) a person has deserted,
97 abandoned, or failed to provide support for any person in violation of law, (iii) a child or such child's parent,
98 guardian, legal custodian, or other person standing in loco parentis is entitled to treatment, rehabilitation, or
99 other services which are required by law, (iv) family abuse has occurred and a protective order is being
100 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
101 occurred, a protective order is being sought pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, and either
102 the alleged victim or the respondent is a juvenile. If any such complainant does not file a petition, the intake
103 officer may file it. In cases in which a child is alleged to be abused, neglected, in need of services, in need of
104 supervision, or delinquent, if the intake officer believes that probable cause does not exist, or that the
105 authorization of a petition will not be in the best interest of the family or juvenile or that the matter may be
106 effectively dealt with by some agency other than the court, he may refuse to authorize the filing of a petition.
107 The intake officer shall provide to a person seeking a protective order pursuant to § 16.1-253.1, 16.1-253.4,
108 or 16.1-279.1 a written explanation of the conditions, procedures, and time limits applicable to the issuance
109 of protective orders pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1. If the person is seeking a protective
110 order pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, the intake officer shall provide a written
111 explanation of the conditions, procedures, and time limits applicable to the issuance of protective orders
112 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 be
114 reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be in need
115 of supervision have utilized or attempted to utilize treatment and services available in the community and
116 have exhausted all appropriate nonjudicial remedies which are available to them. When the intake officer
117 determines that the parties have not attempted to utilize available treatment or services or have not exhausted
118 all appropriate nonjudicial remedies which are available, he shall refer the petitioner and the child alleged to
119 be in need of supervision to the appropriate agency, treatment facility, or individual to receive treatment or
120 services, and a petition shall not be filed. Only after the intake officer determines that the parties have made a
121 reasonable effort to utilize available community treatment or services may he permit the petition to be filed.

122 E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an adult
123 would be punishable as a Class 1 misdemeanor or as a felony, when such refusal is based solely upon a
124 finding that no probable cause exists, the complainant shall be notified in writing at that time of the
125 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

157 Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

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

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

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

162 9. Robbery pursuant to § 18.2-58;

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

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

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

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

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

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

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

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

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

180 2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subsection H of
181 § 16.1-241.

182 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
183 other alcohol-related offense, provided that the juvenile is released to the custody of a parent or legal
184 guardian pending the initial court date. The officer releasing a juvenile to the custody of a parent or legal
185 guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or legal
186 guardian to appear before the court with the juvenile. Disposition of the charge shall be 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 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 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 juvenile, and a copy of the summons shall be forwarded to the court in which the violation is to be tried. When a violation of § 4.1-305 is charged by summons, the juvenile shall be entitled to have the charge referred to intake for consideration of informal proceedings pursuant to subsection B, provided that such right is exercised by written notification to the clerk not later than 10 days prior to trial. At the time such summons alleging a violation of § 4.1-305 is served, the officer shall also serve upon the juvenile written notice of the right to have the charge referred to intake on a form approved by the Supreme Court and make return of such service to the court. If the officer fails to make such service or return, the court shall dismiss the summons without prejudice.

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

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

§ 16.1-277.3. Referral to court service unit.

At any point prior to the commencement of an adjudication hearing on a petition alleging that a child is delinquent, the court, upon motion of the child or his counsel or the attorney for the Commonwealth, if a party to the case, may refer the delinquency charge back to the court service unit in writing and the intake officer shall proceed informally pursuant to subsection B of § 16.1-260. Upon such referral, the court shall dismiss the petition and order that the court records pertaining to the petition be expunged pursuant to subdivision C 2 of § 16.1-306.

§ 16.1-306. Expungement of court records.

A. Notwithstanding the provisions of § 16.1-69.55, the clerk of the juvenile and domestic relations district court shall, on January 2 of each year or on a date designated by the court, destroy its files, papers and records, including electronic records, connected with any proceeding concerning a juvenile in such court, if

218 such juvenile has attained the age of 19 years and five years have elapsed since the date of the last hearing in
219 any case of the juvenile which is subject to this section. However, if the juvenile was found guilty of an
220 offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor
221 Vehicles, the records shall be destroyed when the juvenile has attained the age of 29. If the juvenile was
222 found guilty of a delinquent act which would be a felony if committed by an adult, the records shall be
223 retained.

224 B. However, in all files in which the court records concerning a juvenile contain a finding of guilty of any
225 offense ancillary to (i) a delinquent act that would be a felony if committed by an adult or (ii) any offense for
226 which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles, the
227 records of any such ancillary offense shall also be retained for the time specified for the felony or the offense
228 reported to the Department of Motor Vehicles as specified in subsection A, and all such records shall be
229 available for inspection as provided in § 16.1-305.

230 C. 1. A person who has been the subject of a delinquency or traffic proceeding and (i) has been found
231 innocent thereof or (ii) such proceeding was otherwise dismissed, may file a motion requesting the
232 destruction of all records pertaining to such charge. Notice of such motion shall be given to the attorney for
233 the Commonwealth. Unless good cause is shown why such records should not be destroyed, the court shall
234 grant the motion, and shall send copies of the order to all officers or agencies that are repositories of such
235 records, and all such officers and agencies shall comply with the order.

236 2. *Upon the referral of a delinquency charge to the court service unit, prior to the commencement of the*
237 *adjudication hearing, pursuant to § 16.1-277.3, the court shall enter an order of destruction of all court*
238 *records pertaining to such petition with notice of entry of the order given to the attorney for the*
239 *Commonwealth, and shall send copies of the order to all officers or agencies that are repositories of such*
240 *court records, and all such officers and agencies shall comply with the order. Nothing in this subdivision*
241 *shall be construed to require the destruction of records created or maintained by a court service unit in the*
242 *course of informal intake or diversion pursuant to § 16.1-260.*

243 D. Each person shall be notified of his rights under subsections A and C of this section at the time of his
244 dispositional hearing.

245 E. Upon destruction of the records of a proceeding as provided in subsections A, B, and C, the violation of
246 law shall be treated as if it never occurred. All index references shall be deleted and the court and law-
247 enforcement officers and agencies shall reply and the person may reply to any inquiry that no record exists
248 with respect to such person.

249 F. All docket sheets shall be destroyed in the sixth year after the last hearing date recorded on the docket
250 sheet.