

HOUSE BILL NO. 2002

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary

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

(Patron Prior to Substitute--Delegate Samirah)

A BILL to amend and reenact §§ 16.1-260 and 63.2-1903 of the Code of Virginia, relating to child support; health care coverage.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 16.1-260 and 63.2-1903 of the Code of Virginia are 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 and the performance of community service, based  
83 upon community resources and the circumstances which resulted in the complaint, (B) create an official  
84 record of the action taken by the intake officer and file such record in the juvenile's case file, and (C)  
85 advise the juvenile and the juvenile's parent, guardian, or other person standing in loco parentis and the  
86 complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent  
87 based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241  
88 may result in the filing of a petition with the court.

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

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

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

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

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

131 G. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.), the intake officer shall file a  
132 report with the division superintendent of the school division in which any student who is the subject of a  
133 petition alleging that such student who is a juvenile has committed an act, wherever committed, which

134 would be a crime if committed by an adult, or that such student who is an adult has committed a crime  
135 and is alleged to be within the jurisdiction of the court. The report shall notify the division superintendent  
136 of the filing of the petition and the nature of the offense, if the violation involves:

137 1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-  
138 299 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;

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

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

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

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

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

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

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

149 9. Robbery pursuant to § 18.2-58;

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

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

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

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

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

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

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

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

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

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

169 3. In the case of a misdemeanor violation of § 18.2-266, 18.2-266.1, or 29.1-738, or the  
170 commission of any other alcohol-related offense, or a violation of § 18.2-250.1, provided that the juvenile  
171 is released to the custody of a parent or legal guardian pending the initial court date. The officer releasing  
172 a juvenile to the custody of a parent or legal guardian shall issue a summons to the juvenile and shall also  
173 issue a summons requiring the parent or legal guardian to appear before the court with the juvenile.  
174 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.  
175 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  
176 refuses to provide a sample of blood or breath or samples of both blood and breath for chemical analysis  
177 pursuant to §§ 18.2-268.1 through 18.2-268.12 or 29.1-738.2, the provisions of these sections shall be  
178 followed except that the magistrate shall authorize execution of the warrant as a summons. The summons  
179 shall be served on a parent or legal guardian and the juvenile, and a copy of the summons shall be  
180 forwarded to the court in which the violation is to be tried. When a violation of § 4.1-305 or 18.2-250.1 is  
181 charged by summons, the juvenile shall be entitled to have the charge referred to intake for consideration  
182 of informal proceedings pursuant to subsection B, provided that such right is exercised by written  
183 notification to the clerk not later than 10 days prior to trial. At the time such summons alleging a violation  
184 of § 4.1-305 or 18.2-250.1 is served, the officer shall also serve upon the juvenile written notice of the  
185 right to have the charge referred to intake on a form approved by the Supreme Court and make return of

186 such service to the court. If the officer fails to make such service or return, the court shall dismiss the  
187 summons without prejudice.

188 4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or  
189 Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in §  
190 16.1-237 on a summons issued by the officer investigating the violation in the same manner as provided  
191 by law for adults provided that notice of the summons to appear is mailed by the investigating officer  
192 within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

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

195 **§ 63.2-1903. Authority to issue certain orders; civil penalty.**

196 A. In the absence of a court order, the Department shall have the authority to issue orders directing  
197 the payment of child and child and spousal support and, if available at reasonable cost as defined in §  
198 63.2-1900, to require a provision for health care coverage, including Department-sponsored health care  
199 coverage, or cash medical support, or both, for dependent children of the parents, which shall include the  
200 requirements specified for employers pursuant to subdivision B 5 of § 20-79.3. The Department shall have  
201 the authority to make available Department-sponsored health care coverage for children receiving child  
202 support services from the Department. ~~If health care coverage is unavailable at a reasonable cost, as~~  
203 ~~defined in § 63.2-1900, or inaccessible to either parent, it appears that the gross income of the custodial~~  
204 parent of the dependent child is equal to or less than 200 percent of the federal poverty level promulgated  
205 by the U.S. Department of Health and Human Services from time to time, the Department shall refer the  
206 dependent-~~children~~ child to the Family Access to Medical Insurance Security plan pursuant to § 32.1-351.  
207 However, prior to referring the dependent-~~children~~ child to the Family Access to Medical Insurance  
208 Security plan, the Department shall confirm that neither parent has access to health care coverage at a  
209 reasonable cost for the dependent-~~children~~ child. If a child is enrolled in Department-sponsored health  
210 care coverage, the Department shall collect the cost of the coverage pursuant to subsection E of § 20-  
211 108.2.



212 In ordering the payment of child support, the Department shall set such support at the amount  
213 resulting from computation pursuant to the guideline set out in § 20-108.2, subject to the provisions of §  
214 63.2-1918.

215 B. When a payee no longer has physical custody of a child, the Department shall have the authority  
216 to redirect child support payments to a custodial parent who has physical custody of the child when an  
217 assignment of rights has been made to the Department or an application for services has been made by  
218 such custodial parent with the Division of Child Support Enforcement.

219 C. The Department shall have the authority, upon notice from the Department of Medical  
220 Assistance Services, to use any existing enforcement mechanisms provided by this chapter to collect the  
221 wages, salary, or other employment income or to withhold amounts from state tax refunds of any obligor  
222 who has not used payments received from a third party to reimburse, as appropriate, either the other parent  
223 of such child or the provider of such services, to the extent necessary to reimburse the Department of  
224 Medical Assistance Services.

225 D. The Department may order the obligor and payee to notify each other or the Department upon  
226 request of current gross income as defined in § 20-108.2 and any other pertinent information that may  
227 affect child support amounts. For good cause shown, the Department may order that such information be  
228 provided to the Department and made available to the parties for inspection in lieu of the parties' providing  
229 such information directly to each other. The Department shall record the social security number of each  
230 party or control number issued to a party by the Department of Motor Vehicles pursuant to § 46.2-342 in  
231 the Department's file of the case.

232 E. The Department shall develop procedures governing the method and timing of periodic review  
233 and adjustment of child support orders established or enforced or both pursuant to Title IV-D of the Social  
234 Security Act, as amended. If there is an assignment under Title IV-A of the Social Security Act or at the  
235 request of either parent subject to the order, the Department shall initiate a review of such order every  
236 three years without requiring proof or showing of a change in circumstances and shall initiate appropriate  
237 action to adjust such order in accordance with the provisions of § 20-108.2 and subject to the provisions  
238 of § 63.2-1918.

239 F. In order to provide essential information for whatever establishment or enforcement actions are  
240 necessary for the collection of child support, the Commissioner, the Director of the Division of Child  
241 Support Enforcement, and district managers of Division of Child Support Enforcement offices shall have  
242 the right to (i) subpoena financial records of, or other information relating to, the noncustodial parent and  
243 obligee from any person, firm, corporation, association, or political subdivision or department of the  
244 Commonwealth and (ii) summons the noncustodial parent and obligee to appear in the Division's offices.  
245 The Commissioner, Director, and district managers may also subpoena copies of state and federal income  
246 tax returns. The district managers shall be trained in the correct use of the subpoena process prior to  
247 exercising subpoena authority. A civil penalty not to exceed \$1,000 may be assessed by the Commissioner  
248 for a failure to respond to a subpoena issued pursuant to this subsection.

249 G. In the absence of a court order, the Department may establish an administrative support order  
250 on an out-of-state obligor pursuant to subdivision A 8 or 9 of § 8.01-328.1 or § 20-88.35. The Department  
251 may also take action to enforce an administrative or court order on an out-of-state obligor. Service of such  
252 actions shall be in accordance with the provisions of § 8.01-296, 8.01-327 or 8.01-329 or by certified mail,  
253 return receipt requested, or electronic means in accordance with § 63.2-1917.

254 H. If a support order has been issued in another state but the obligor, the obligee, and the child  
255 now live in the Commonwealth, the Department may (i) enforce the order without registration, using all  
256 enforcement remedies available under this chapter, and (ii) register the order in the appropriate tribunal of  
257 the Commonwealth for enforcement or modification.

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