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HOUSE BILL NO. 1852

Offered January 13, 2025

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A BILL to amend and reenact § 16.1-228 of the Code of Virginia, relating to definition of "family or household member."

Patron—Arnold

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-228 of the Code of Virginia is amended and reenacted as follows:

§ 16.1-228. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Abused or neglected child" means any child:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child. Further, a decision by parents who have legal authority for the child or, in the absence of parents with legal authority for the child, any person with legal authority for the child who refuses a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person with legal authority and the child; (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person with legal authority and the child have considered alternative treatment options; and (iv) the parents or other person with legal authority and the child believe in good faith that such decision is in the child's best interest. No child whose parent or other person responsible for his care allows the child to engage in independent activities without adult supervision shall for that reason alone be considered to be an abused or neglected child, provided that (a) such independent activities are appropriate based on the child's age, maturity, and physical and mental abilities and (b) such lack of supervision does not constitute conduct that is so grossly negligent as to endanger the health or safety of the child. Such independent activities include traveling to or from school or nearby locations by bicycle or on foot, playing outdoors, or remaining at home for a reasonable period of time. Nothing in this subdivision shall be construed to limit the provisions of § 16.1-278.4;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care, or an intimate partner of such parent or person, commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law;

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian, or other person standing in loco parentis;

6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55.1-2000, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a Tier III offender pursuant to § 9.1-902; or

7. Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in the federal Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7102 et seq., and in the federal Justice for Victims of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.

If a civil proceeding under this chapter is based solely on the parent having left the child at a hospital or emergency medical services agency, it shall be an affirmative defense that such parent safely delivered the child within 30 days of the child's birth to (i) a hospital that provides 24-hour emergency services, (ii) an attended emergency medical services agency that employs emergency medical services personnel, or (iii) a

59 newborn safety device located at and operated by such hospital or emergency medical services agency. For
60 purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find
61 such a child is a neglected child upon the ground of abandonment.

62 "Adoptive home" means the place of residence of any natural person in which a child resides as a member
63 of the household and in which he has been placed for the purposes of adoption or in which he has been
64 legally adopted by another member of the household.

65 "Adult" means a person 18 years of age or older.

66 "Ancillary crime" or "ancillary charge" means any delinquent act committed by a juvenile as a part of the
67 same act or transaction as, or that constitutes a part of a common scheme or plan with, a delinquent act that
68 would be a felony if committed by an adult.

69 "Child," "juvenile," or "minor" means a person who is (i) younger than 18 years of age or (ii) for purposes
70 of the Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9 of Title 63.2, younger
71 than 21 years of age and meets the eligibility criteria set forth in § 63.2-919.

72 "Child in need of services" means (i) a child whose behavior, conduct or condition presents or results in a
73 serious threat to the well-being and physical safety of the child or (ii) a child under the age of 14 whose
74 behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of
75 another person; however, no child who in good faith is under treatment solely by spiritual means through
76 prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for
77 that reason alone be considered to be a child in need of services, nor shall any child who habitually remains
78 away from or habitually deserts or abandons his family as a result of what the court or the local child
79 protective services unit determines to be incidents of physical, emotional or sexual abuse in the home be
80 considered a child in need of services for that reason alone.

81 However, to find that a child falls within these provisions, (a) the conduct complained of must present a
82 clear and substantial danger to the child's life or health or to the life or health of another person; (b) the child
83 or his family is in need of treatment, rehabilitation, or services not presently being received; and (c) the
84 intervention of the court is essential to provide the treatment, rehabilitation, or services needed by the child or
85 his family.

86 "Child in need of supervision" means:

87 1. A child who, while subject to compulsory school attendance, is habitually and without justification
88 absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of any
89 and all educational services and programs that are required to be provided by law and which meet the child's
90 particular educational needs, (ii) the school system from which the child is absent or other appropriate agency
91 has made a reasonable effort to effect the child's regular attendance without success, and (iii) the school
92 system has provided documentation that it has complied with the provisions of § 22.1-258; or

93 2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or
94 placement authority, remains away from or deserts or abandons his family or lawful custodian on more than
95 one occasion or escapes or remains away without proper authority from a residential care facility in which he
96 has been placed by the court, and (i) such conduct presents a clear and substantial danger to the child's life or
97 health, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being
98 received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services
99 needed by the child or his family.

100 "Child welfare agency" means a child-placing agency, child-caring institution or independent foster home
101 as defined in § 63.2-100.

102 "The court" or the "juvenile court" or the "juvenile and domestic relations court" means the juvenile and
103 domestic relations district court of each county or city.

104 "Delinquent act" means (i) an act designated a crime under the law of the Commonwealth, or an ordinance
105 of any city, county, town, or service district, or under federal law, (ii) a violation of § 18.2-308.7, or (iii) a
106 violation of a court order as provided for in § 16.1-292, but does not include an act other than a violation of §
107 18.2-308.7, which is otherwise lawful, but is designated a crime only if committed by a child.

108 "Delinquent child" means a child who has committed a delinquent act or an adult who has committed a
109 delinquent act prior to his eighteenth birthday, except where the jurisdiction of the juvenile court has been
110 terminated under the provisions of § 16.1-269.6.

111 "Department" means the Department of Juvenile Justice and "Director" means the administrative head in
112 charge thereof or such of his assistants and subordinates as are designated by him to discharge the duties
113 imposed upon him under this law.

114 "Driver's license" means any document issued under Chapter 3 (§ 46.2-300 et seq.) of Title 46.2, or the
115 comparable law of another jurisdiction, authorizing the operation of a motor vehicle upon the highways.

116 "Family abuse" means any act involving violence, force, or threat that results in bodily injury or places
117 one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person
118 against such person's family or household member. Such act includes, but is not limited to, any forceful
119 detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title

120 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death,
121 sexual assault, or bodily injury.

122 "Family or household member" means (i) the person's spouse, whether or not such spouse resides in the
123 same home with the person; (ii) the person's former spouse, whether or not such person resides in the same
124 home with the person; (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters,
125 half-brothers, half-sisters, grandparents, and grandchildren, regardless of whether such persons reside in the
126 same home with the person; (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law,
127 brothers-in-law, and sisters-in-law who reside in the same home with the person; (v) any individual who has a
128 child in common with the person, whether or not the person and that individual have been married or have
129 resided together at any time; (vi) any individual who cohabits or who, within the previous 12 months,
130 cohabited with the person, and any children of either of them then residing in the same home with the person,
131 *whether or not such individual is currently or was in a romantic, dating, or sexual relationship with the*
132 *person*; or (vii) an individual who is a legal custodian of a juvenile.

133 "Fictive kin" means persons who are not related to a child by blood or adoption but have an established
134 relationship with the child or his family.

135 "Foster care services" means the provision of a full range of casework, treatment and community services
136 for a planned period of time to a child who is abused or neglected as defined in § 63.2-100 or in need of
137 services as defined in this section and his family when the child (i) has been identified as needing services to
138 prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between
139 the local board of social services or a public agency designated by the community policy and management
140 team and the parents or guardians where legal custody remains with the parents or guardians, (iii) has been
141 committed or entrusted to a local board of social services or child welfare agency, (iv) has been placed under
142 the supervisory responsibility of the local board pursuant to § 16.1-293, or (v) is living with a relative
143 participating in the Federal-Funded Kinship Guardianship Assistance program set forth in § 63.2-1305 and
144 developed consistent with 42 U.S.C. § 673 or the State-Funded Kinship Guardianship Assistance program set
145 forth in § 63.2-1306.

146 "Independent living arrangement" means placement of (i) a child at least 16 years of age who is in the
147 custody of a local board or licensed child-placing agency by the local board or licensed child-placing agency
148 or (ii) a child at least 16 years of age or a person between the ages of 18 and 21 who was committed to the
149 Department of Juvenile Justice immediately prior to placement by the Department of Juvenile Justice, in a
150 living arrangement in which such child or person does not have daily substitute parental supervision.

151 "Independent living services" means services and activities provided to a child in foster care 14 years of
152 age or older and who has been committed or entrusted to a local board of social services, child welfare
153 agency, or private child-placing agency. "Independent living services" may also mean services and activities
154 provided to a person who (i) was in foster care on his eighteenth birthday and has not yet reached the age of
155 21 years; (ii) is between the ages of 18 and 21 and who, immediately prior to his commitment to the
156 Department of Juvenile Justice, was in the custody of a local board of social services; or (iii) is a child at least
157 16 years of age or a person between the ages of 18 and 21 who was committed to the Department of Juvenile
158 Justice immediately prior to placement in an independent living arrangement. "Independent living services"
159 includes counseling, education, housing, employment, and money management skills development and access
160 to essential documents and other appropriate services to help children or persons prepare for self-sufficiency.

161 "Intake officer" means a juvenile probation officer appointed as such pursuant to the authority of this
162 chapter.

163 "Jail" or "other facility designed for the detention of adults" means a local or regional correctional facility
164 as defined in § 53.1-1, except those facilities utilized on a temporary basis as a court holding cell for a child
165 incident to a court hearing or as a temporary lock-up room or ward incident to the transfer of a child to a
166 juvenile facility.

167 "The judge" means the judge or the substitute judge of the juvenile and domestic relations district court of
168 each county or city.

169 "This law" or "the law" means the Juvenile and Domestic Relations District Court Law embraced in this
170 chapter.

171 "Legal custody" means (i) a legal status created by court order which vests in a custodian the right to have
172 physical custody of the child, to determine and redetermine where and with whom he shall live, the right and
173 duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary
174 medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by
175 court order of joint custody as defined in § 20-107.2.

176 "Permanent foster care placement" means the place of residence in which a child resides and in which he
177 has been placed pursuant to the provisions of §§ 63.2-900 and 63.2-908 with the expectation and agreement
178 between the placing agency and the place of permanent foster care that the child shall remain in the
179 placement until he reaches the age of majority unless modified by court order or unless removed pursuant to
180 § 16.1-251 or 63.2-1517. A permanent foster care placement may be a place of residence of any natural

181 person or persons deemed appropriate to meet a child's needs on a long-term basis.

182 "Qualified individual" means a trained professional or licensed clinician who is not an employee of the
183 local board of social services or licensed child-placing agency that placed the child in a qualified residential
184 treatment program and is not affiliated with any placement setting in which children are placed by such local
185 board of social services or licensed child-placing agency.

186 "Qualified residential treatment program" means a program that (i) provides 24-hour residential placement
187 services for children in foster care; (ii) has adopted a trauma-informed treatment model that meets the clinical
188 and other needs of children with serious emotional or behavioral disorders, including any clinical or other
189 needs identified through assessments conducted pursuant to clause (viii) of this definition; (iii) employs
190 registered or licensed nursing and other clinical staff who provide care, on site and within the scope of their
191 practice, and are available 24 hours a day, seven days a week; (iv) conducts outreach with the child's family
192 members, including efforts to maintain connections between the child and his siblings and other family;
193 documents and maintains records of such outreach efforts; and maintains contact information for any known
194 biological family and fictive kin of the child; (v) whenever appropriate and in the best interest of the child,
195 facilitates participation by family members in the child's treatment program before and after discharge and
196 documents the manner in which such participation is facilitated; (vi) provides discharge planning and
197 family-based aftercare support for at least six months after discharge; (vii) is licensed in accordance with 42
198 U.S.C. § 671(a)(10) and accredited by an organization approved by the federal Secretary of Health and
199 Human Services; and (viii) requires that any child placed in the program receive an assessment within 30
200 days of such placement by a qualified individual that (a) assesses the strengths and needs of the child using an
201 age-appropriate, evidence-based, validated, and functional assessment tool approved by the Commissioner of
202 Social Services; (b) identifies whether the needs of the child can be met through placement with a family
203 member or in a foster home or, if not, in a placement setting authorized by 42 U.S.C. § 672(k)(2), including a
204 qualified residential treatment program, that would provide the most effective and appropriate level of care
205 for the child in the least restrictive environment and be consistent with the short-term and long-term goals
206 established for the child in his foster care or permanency plan; (c) establishes a list of short-term and
207 long-term mental and behavioral health goals for the child; and (d) is documented in a written report to be
208 filed with the court prior to any hearing on the child's placement pursuant to § 16.1-281, 16.1-282, 16.1-282.1
209 , or 16.1-282.2.

210 "Residual parental rights and responsibilities" means all rights and responsibilities remaining with the
211 parent after the transfer of legal custody or guardianship of the person, including but not limited to the right
212 of visitation, consent to adoption, the right to determine religious affiliation and the responsibility for support.

213 "Secure facility" or "detention home" means a local, regional or state public or private locked residential
214 facility that has construction fixtures designed to prevent escape and to restrict the movement and activities of
215 children held in lawful custody.

216 "Shelter care" means the temporary care of children in physically unrestricting facilities.

217 "State Board" means the State Board of Juvenile Justice.

218 "Status offender" means a child who commits an act prohibited by law which would not be criminal if
219 committed by an adult.

220 "Status offense" means an act prohibited by law which would not be an offense if committed by an adult.

221 "Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of §
222 16.1-269.1 when committed by a juvenile 14 years of age or older.

223 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
224 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
225 **appropriation cannot be determined for periods of imprisonment in state adult correctional facilities;**
226 **therefore, Chapter 2 of the Acts of Assembly of 2024, Special Session I, requires the Virginia Criminal**
227 **Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the**
228 **Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for**
229 **periods of commitment to the custody of the Department of Juvenile Justice.**