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HOUSE BILL NO. 1869

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice

on February 10, 2025)

(Patron Prior to Substitute—Delegate McClure)

A BILL to amend and reenact §§ 16.1-228 and 18.2-308.1:8 of the Code of Virginia, relating to purchase, possession, or transportation of firearm; assault and battery of a family or household member; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-228 and 18.2-308.1:8 of the Code of Virginia are 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 newborn safety device located at and operated by such hospital or emergency medical services agency. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

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

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

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

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

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

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

84 "Child in need of supervision" means:

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

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

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

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

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

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

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

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

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

120 "Family or household member" means (i) the person's spouse, whether or not such spouse resides in the

121 same home with the person; (ii) the person's former spouse, whether or not such person resides in the same
 122 home with the person; (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters,
 123 half-brothers, half-sisters, grandparents, and grandchildren, regardless of whether such persons reside in the
 124 same home with the person; (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law,
 125 brothers-in-law, and sisters-in-law who reside in the same home with the person; (v) any individual who has a
 126 child in common with the person, whether or not the person and that individual have been married or have
 127 resided together at any time; (vi) any individual who cohabits or who, within the previous 12 months,
 128 cohabited with the person, and any children of either of them then residing in the same home with the person;
 129 ~~or~~ (vii) an individual who is a legal custodian of a juvenile; *or (viii) any individual who has recently had a*
 130 *dating relationship as that term is defined in 18 U.S.C. § 921(a)(37)(A) and described in (a)(37)(B) and*
 131 *(a)(37)(C).*

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

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

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

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

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

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

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

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

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

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

181 "Qualified individual" means a trained professional or licensed clinician who is not an employee of the

182 local board of social services or licensed child-placing agency that placed the child in a qualified residential
 183 treatment program and is not affiliated with any placement setting in which children are placed by such local
 184 board of social services or licensed child-placing agency.

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

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

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

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

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

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

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

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

222 **§ 18.2-308.1:8. Purchase, possession, or transportation of firearm following an assault and battery**
 223 **of a family or household member; penalties.**

224 A. 1. Any person who knowingly and intentionally purchases, possesses, or transports any firearm
 225 following a misdemeanor conviction for an offense that occurred on or after July 1, 2021, for (i) the offense
 226 of assault and battery of a family or household member or (ii) an offense substantially similar to clause (i)
 227 under the laws of any other state or of the United States is guilty of a Class 1 misdemeanor.

228 2. Any person who knowingly and intentionally purchases, possesses, or transports any firearm following
 229 a misdemeanor conviction for an offense that occurred on or after July 1, 2025, for (i) the offense of assault
 230 and battery against a family or household member or (ii) an offense substantially similar to clause (i) under
 231 the laws of any other state or of the United States is guilty of a Class 1 misdemeanor.

232 B. 1. For the purposes of ~~this section~~ subdivision A 1, "family or household member" means (i) the
 233 person's spouse, whether or not he resides in the same home with the person; (ii) the person's former spouse,
 234 whether or not he resides in the same home with the person; or (iii) any individual who has a child in
 235 common with the person, whether or not the person and that individual have been married or have resided
 236 together at any time.

237 2. For the purposes of subdivision A 2, "family or household member" means (i) the person's spouse,
 238 whether or not he resides in the same home with the person; (ii) the person's former spouse, whether or not
 239 he resides in the same home with the person; (iii) any individual who has a child in common with the person,
 240 whether or not the person and that individual have been married or have resided together at any time; (iv)
 241 any individual who cohabits or who, within the previous 12 months, cohabitated with the person; or (v) any
 242 individual who has recently had a continuous serious relationship of a romantic or intimate nature with the

243 *person as described in 18 U.S.C. § 921(a)(37)(B) and (a)(37)(C).*

244 C. Any person prohibited from purchasing, possessing, or transporting a firearm pursuant to subsection A
245 shall be prohibited from purchasing, possessing, or transporting a firearm for three years following the date of
246 the conviction at which point the person convicted of such offense shall no longer be prohibited from
247 purchasing, possessing, or transporting a firearm pursuant to subsection A. Such person shall have his
248 firearms rights restored, unless such person receives another disqualifying conviction, is subject to a
249 protective order that would restrict his rights to carry a firearm, or is otherwise prohibited by law from
250 purchasing, possessing, or transporting a firearm.

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