

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 16.1-228 of the Code of Virginia, relating to child in need of services;*
 3 *definition.*

4 [H 2260]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 16.1-228 of the Code of Virginia is amended and reenacted as follows:**8 **§ 16.1-228. Definitions.**

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

10 "Abused or neglected child" means any child:

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

18 2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for
 19 his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in
 20 accordance with the tenets and practices of a recognized church or religious denomination shall for that
 21 reason alone be considered to be an abused or neglected child. Further, a decision by parents who have legal
 22 authority for the child or, in the absence of parents with legal authority for the child, any person with legal
 23 authority for the child who refuses a particular medical treatment for a child with a life-threatening condition
 24 shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or
 25 other person with legal authority and the child; (ii) the child has reached 14 years of age and is sufficiently
 26 mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person
 27 with legal authority and the child have considered alternative treatment options; and (iv) the parents or other
 28 person with legal authority and the child believe in good faith that such decision is in the child's best interest.
 29 No child whose parent or other person responsible for his care allows the child to engage in independent
 30 activities without adult supervision shall for that reason alone be considered to be an abused or neglected
 31 child, provided that (a) such independent activities are appropriate based on the child's age, maturity, and
 32 physical and mental abilities and (b) such lack of supervision does not constitute conduct that is so grossly
 33 negligent as to endanger the health or safety of the child. Such independent activities include traveling to or
 34 from school or nearby locations by bicycle or on foot, playing outdoors, or remaining at home for a
 35 reasonable period of time. Nothing in this subdivision shall be construed to limit the provisions of §
 36 16.1-278.4;

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

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

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

43 6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental
 44 injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in §
 45 55.1-2000, with a person to whom the child is not related by blood or marriage and who the parent or other
 46 person responsible for his care knows has been convicted of an offense against a minor for which registration
 47 is required as a Tier III offender pursuant to § 9.1-902; or

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

51 If a civil proceeding under this chapter is based solely on the parent having left the child at a hospital or
 52 emergency medical services agency, it shall be an affirmative defense that such parent safely delivered the
 53 child within 30 days of the child's birth to (i) a hospital that provides 24-hour emergency services, (ii) an
 54 attended emergency medical services agency that employs emergency medical services personnel, or (iii) a
 55 newborn safety device located at and operated by such hospital or emergency medical services agency. For
 56 purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find

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HB2260ER

57 such a child is a neglected child upon the ground of abandonment.

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

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

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

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

68 "Child in need of services" means (i) a child whose behavior, conduct, or condition presents or results in a
69 serious threat to the well-being and physical safety of the child; (ii) *a child who remains away from or deserts
70 or abandons his family or lawful custodian during one occasion and is demonstratively at risk of coercion,
71 exploitation, abuse, or manipulation or has been lured from his parent or lawful custodian by means of
72 trickery or misrepresentation or under false pretenses;* or ~~(ii)~~ (iii) a child under the age of 14 whose behavior,
73 conduct, or condition presents or results in a serious threat to the well-being and physical safety of another
74 person; however, no child who in good faith is under treatment solely by spiritual means through prayer in
75 accordance with the tenets and practices of a recognized church or religious denomination shall for that
76 reason alone be considered to be a child in need of services, nor shall any child who habitually remains away
77 from or habitually deserts or abandons his family as a result of what the court or the local child protective
78 services unit determines to be incidents of physical, emotional, or sexual abuse in the home be considered a
79 child in need of services for that reason alone.

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

85 "Child in need of supervision" means:

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

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

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

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

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

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

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

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

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

119 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death,
120 sexual assault, or bodily injury.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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