

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 16.1-228, 16.1-246, 16.1-278.8, and 18.2-371 of the Code of Virginia and to*
 3 *amend the Code of Virginia by adding a section numbered 16.1-278.9:1, relating to children;*
 4 *adjudication of delinquency.*

5 [S 18]

6 Approved

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

8 **1. That §§ 16.1-228, 16.1-246, 16.1-278.8, and 18.2-371 of the Code of Virginia are amended and**
 9 **reenacted and that the Code of Virginia is amended by adding a section numbered 16.1-278.9:1 as**
 10 **follows:**

11 **§ 16.1-228. Definitions.**

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

13 "Abused or neglected child" means any child:

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

21 2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for
 22 his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in
 23 accordance with the tenets and practices of a recognized church or religious denomination shall for that
 24 reason alone be considered to be an abused or neglected child. Further, a decision by parents who have legal
 25 authority for the child or, in the absence of parents with legal authority for the child, any person with legal
 26 authority for the child who refuses a particular medical treatment for a child with a life-threatening condition
 27 shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or
 28 other person with legal authority and the child; (ii) the child has reached 14 years of age and is sufficiently
 29 mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person
 30 with legal authority and the child have considered alternative treatment options; and (iv) the parents or other
 31 person with legal authority and the child believe in good faith that such decision is in the child's best interest.
 32 No child whose parent or other person responsible for his care allows the child to engage in independent
 33 activities without adult supervision shall for that reason alone be considered to be an abused or neglected
 34 child, provided that (a) such independent activities are appropriate based on the child's age, maturity, and
 35 physical and mental abilities and (b) such lack of supervision does not constitute conduct that is so grossly
 36 negligent as to endanger the health or safety of the child. Such independent activities include traveling to or
 37 from school or nearby locations by bicycle or on foot, playing outdoors, or remaining at home for a
 38 reasonable period of time. Nothing in this subdivision shall be construed to limit the provisions of
 39 § 16.1-278.4;

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

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

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

46 6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental
 47 injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in
 48 § 55.1-2000, with a person to whom the child is not related by blood or marriage and who the parent or other
 49 person responsible for his care knows has been convicted of an offense against a minor for which registration
 50 is required as a Tier III offender pursuant to § 9.1-902; or

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

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

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

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

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

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

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

71 "Child in need of services" means (i) a child whose behavior, conduct, or condition presents or results in a
 72 serious threat to the well-being and physical safety of the child; (ii) a child who remains away from or deserts
 73 or abandons his family or lawful custodian during one occasion and is demonstratively at risk of coercion,
 74 exploitation, abuse, or manipulation or has been lured from his parent or lawful custodian by means of
 75 trickery or misrepresentation or under false pretenses; ~~or~~ (iii) a child ~~under the age of~~ *younger than 14 years*
 76 *of age* whose behavior, conduct, or condition presents or results in a serious threat to the well-being and
 77 physical safety of another person; *or (iv) a child younger than 11 years of age who has committed an act that*
 78 *would be delinquent if committed by a child 11 years of age or older;* however, no child who in good faith is
 79 under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a
 80 recognized church or religious denomination shall for that reason alone be considered to be a child in need of
 81 services, nor shall any child who habitually remains away from or habitually deserts or abandons his family
 82 as a result of what the court or the local child protective services unit determines to be incidents of physical,
 83 emotional, or sexual abuse in the home be considered a child in need of services for that reason alone.

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

89 "Child in need of supervision" means:

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

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

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

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

107 "Delinquent act" means (i) an act designated a crime under the law of the Commonwealth, or an ordinance
 108 of any city, county, town, or service district, or under federal law, (ii) a violation of § 18.2-308.7, or (iii) a
 109 violation of a court order as provided for in § 16.1-292, but does not include an act other than a violation of
 110 § 18.2-308.7, which is otherwise lawful, but is designated a crime only if committed by a child.

111 "Delinquent child" means a child *11 years of age or older* who has committed a delinquent act or an adult
 112 who has committed a delinquent act prior to his eighteenth birthday, except where the jurisdiction of the
 113 juvenile court has been terminated under the provisions of § 16.1-269.6.

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

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

119 "Family abuse" means any act involving violence, force, or threat that results in bodily injury or places
 120 one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person
 121 against such person's family or household member. Such act includes, but is not limited to, any forceful
 122 detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title
 123 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death,
 124 sexual assault, or bodily injury.

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

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

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

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

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

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

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

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

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

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

178 "Permanent foster care placement" means the place of residence in which a child resides and in which he
 179 has been placed pursuant to the provisions of §§ 63.2-900 and 63.2-908 with the expectation and agreement
 180 between the placing agency and the place of permanent foster care that the child shall remain in the

181 placement until he reaches the age of majority unless modified by court order or unless removed pursuant to
 182 § 16.1-251 or 63.2-1517. A permanent foster care placement may be a place of residence of any natural
 183 person or persons deemed appropriate to meet a child's needs on a long-term basis.

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

188 "Qualified residential treatment program" means a program that (i) provides 24-hour residential placement
 189 services for children in foster care; (ii) has adopted a trauma-informed treatment model that meets the clinical
 190 and other needs of children with serious emotional or behavioral disorders, including any clinical or other
 191 needs identified through assessments conducted pursuant to clause (viii) of this definition; (iii) employs
 192 registered or licensed nursing and other clinical staff who provide care, on site and within the scope of their
 193 practice, and are available 24 hours a day, seven days a week; (iv) conducts outreach with the child's family
 194 members, including efforts to maintain connections between the child and his siblings and other family;
 195 documents and maintains records of such outreach efforts; and maintains contact information for any known
 196 biological family and fictive kin of the child; (v) whenever appropriate and in the best interest of the child,
 197 facilitates participation by family members in the child's treatment program before and after discharge and
 198 documents the manner in which such participation is facilitated; (vi) provides discharge planning and
 199 family-based aftercare support for at least six months after discharge; (vii) is licensed in accordance with 42
 200 U.S.C. § 671(a)(10) and accredited by an organization approved by the federal Secretary of Health and
 201 Human Services; and (viii) requires that any child placed in the program receive an assessment within 30
 202 days of such placement by a qualified individual that (a) assesses the strengths and needs of the child using an
 203 age-appropriate, evidence-based, validated, and functional assessment tool approved by the Commissioner of
 204 Social Services; (b) identifies whether the needs of the child can be met through placement with a family
 205 member or in a foster home or, if not, in a placement setting authorized by 42 U.S.C. § 672(k)(2), including a
 206 qualified residential treatment program, that would provide the most effective and appropriate level of care
 207 for the child in the least restrictive environment and be consistent with the short-term and long-term goals
 208 established for the child in his foster care or permanency plan; (c) establishes a list of short-term and
 209 long-term mental and behavioral health goals for the child; and (d) is documented in a written report to be
 210 filed with the court prior to any hearing on the child's placement pursuant to § 16.1-281, 16.1-282,
 211 16.1-282.1, or 16.1-282.2.

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

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

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

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

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

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

223 "Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of
 224 § 16.1-269.1 when committed by a juvenile 14 years of age or older.

225 **§ 16.1-246. When and how child may be taken into immediate custody.**

226 No child may be taken into immediate custody except:

227 A. With a detention order issued by the judge, the intake officer or the clerk, when authorized by the
 228 judge, of the juvenile and domestic relations district court in accordance with the provisions of this law or
 229 with a warrant issued by a magistrate; or

230 B. When a child is alleged to be in need of services or supervision and (i) there is a clear and substantial
 231 danger to the child's life or health, *the safety of the child's family, or the safety of the public* or (ii) the
 232 assumption of custody is necessary to ensure the child's appearance before the court; or

233 C. When, in the presence of the officer who makes the arrest, a child has committed an act designated a
 234 crime under the law of this Commonwealth, or an ordinance of any city, county, town or service district, or
 235 under federal law and the officer believes that such is necessary for the protection of the public interest; or

236 C1. When a child has committed a misdemeanor offense involving (i) shoplifting in violation of
 237 § 18.2-103, (ii) assault and battery or (iii) carrying a weapon on school property in violation of § 18.2-308.1
 238 and, although the offense was not committed in the presence of the officer who makes the arrest, the arrest is
 239 based on probable cause on reasonable complaint of a person who observed the alleged offense; or

240 D. When there is probable cause to believe that a child has committed an offense which if committed by
 241 an adult would be a felony; or

242 E. When a law-enforcement officer has probable cause to believe that a person committed to the

243 Department of Juvenile Justice as a child has run away or that a child has escaped from a jail or detention
244 home; or

245 F. When a law-enforcement officer has probable cause to believe a child has run away from a residential,
246 child-caring facility or home in which he had been placed by the court, the local department of social services
247 or a licensed child welfare agency; or

248 G. When a law-enforcement officer has probable cause to believe that a child (i) has run away from home
249 or (ii) is without adult supervision at such hours of the night and under such circumstances that the law-
250 enforcement officer reasonably concludes that there is a clear and substantial danger to the child's welfare; or

251 H. When a child is believed to be in need of inpatient treatment for mental illness as provided in
252 § 16.1-340.

253 **§ 16.1-278.8. Delinquent juveniles.**

254 A. If a juvenile *11 years of age or older* is found to be delinquent, except where such finding involves a
255 refusal to take a breath test in violation of § 18.2-268.2 or a similar ordinance, the juvenile court or the circuit
256 court may make any of the following orders of disposition for his supervision, care, and rehabilitation:

257 1. Enter an order pursuant to the provisions of § 16.1-278;

258 2. Permit the juvenile to remain with his parent, subject to such conditions and limitations as the court
259 may order with respect to the juvenile and his parent;

260 3. Order the parent of a juvenile living with him to participate in such programs, cooperate in such
261 treatment or be subject to such conditions and limitations as the court may order and as are designed for the
262 rehabilitation of the juvenile and his parent;

263 4. Defer disposition for a specific period of time established by the court with due regard for the gravity of
264 the offense and the juvenile's history, after which time the charge may be dismissed by the judge if the
265 juvenile exhibits good behavior during the period for which disposition is deferred;

266 5. Without entering a judgment of guilty and with the consent of the juvenile and his attorney, defer
267 disposition of the delinquency charge for a specific period of time established by the court with due regard
268 for the gravity of the offense and the juvenile's history, and place the juvenile on probation under such
269 conditions and limitations as the court may prescribe. Upon fulfillment of the terms and conditions, the court
270 shall discharge the juvenile and dismiss the proceedings against him. Discharge and dismissal under these
271 provisions shall be without adjudication of guilt;

272 6. Order the parent of a juvenile with whom the juvenile does not reside to participate in such programs,
273 cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are
274 designed for the rehabilitation of the juvenile where the court determines this participation to be in the best
275 interest of the juvenile and other parties concerned and where the court determines it reasonable to expect the
276 parent to be able to comply with such order;

277 7. Place the juvenile on probation under such conditions and limitations as the court may prescribe;

278 7a. Place the juvenile on probation and order treatment for the abuse or dependence on alcohol or drugs in
279 a program licensed by the Department of Behavioral Health and Developmental Services for the treatment of
280 juveniles for substance abuse provided that (i) the juvenile has received a substance abuse screening and
281 assessment pursuant to § 16.1-273 and that such assessment reasonably indicates that the commission of the
282 offense was motivated by, or closely related to, the habitual use of alcohol or drugs and indicates that the
283 juvenile is in need of treatment for this condition; (ii) the juvenile has not previously been and is not currently
284 being adjudicated for a violent juvenile felony; and (iii) such facility is available. Upon the juvenile's
285 withdrawal, removal, or refusal to comply with the conditions of participation in the program, he shall be
286 brought before the court for a hearing at which the court may impose any other disposition authorized by this
287 section. The court shall review such placements at 30-day intervals;

288 8. Impose a fine not to exceed \$500 upon such juvenile;

289 9. Suspend the motor vehicle and driver's license of such juvenile or impose a curfew on the juvenile as to
290 the hours during which he may operate a motor vehicle. Any juvenile whose driver's license is suspended
291 may be referred for an assessment and subsequent referral to appropriate services, upon such terms and
292 conditions as the court may order. The court, in its discretion and upon a demonstration of hardship, may
293 authorize the use of a restricted permit to operate a motor vehicle by any juvenile who enters such program
294 for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to and from school. The
295 restricted permit shall be issued in accordance with the provisions of such subsection. However, only an
296 abstract of the court order that identifies the juvenile and the conditions under which the restricted license is
297 to be issued shall be sent to the Department of Motor Vehicles.

298 If a curfew is imposed, the juvenile shall surrender his driver's license, which shall be held in the physical
299 custody of the court during any period of curfew restriction. The court shall send an abstract of any order
300 issued under the provisions of this section to the Department of Motor Vehicles, which shall preserve a
301 record thereof. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter or the
302 provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys for the
303 Commonwealth and courts. A copy of the court order, upon which shall be noted all curfew restrictions, shall
304 be provided to the juvenile and shall contain such information regarding the juvenile as is reasonably

305 necessary to identify him. The juvenile may operate a motor vehicle under the court order in accordance with
306 its terms.

307 Any juvenile who operates a motor vehicle in violation of any restrictions imposed pursuant to this section
308 is guilty of a violation of § 46.2-301.

309 The Department of Motor Vehicles shall refuse to issue a driver's license to any juvenile denied a driver's
310 license until such time as is stipulated in the court order or until notification by the court of withdrawal of the
311 order imposing the curfew;

312 10. Require the juvenile to make restitution or reparation to the aggrieved party or parties for actual
313 damages or loss caused by the offense for which the juvenile was found to be delinquent;

314 11. Require the juvenile to participate in a public service project under such conditions as the court
315 prescribes;

316 12. In case of traffic violations, impose only those penalties that are authorized to be imposed on adults
317 for such violations. However, for those violations punishable by confinement if committed by an adult,
318 confinement shall be imposed only as authorized by this title;

319 13. Transfer legal custody to any of the following:

320 a. A relative or other individual who, after study, is found by the court to be qualified to receive and care
321 for the juvenile;

322 b. A child welfare agency, private organization or facility that is licensed or otherwise authorized by law
323 to receive and provide care for such juvenile. The court shall not transfer legal custody of a delinquent
324 juvenile to an agency, organization or facility outside of the Commonwealth without the approval of the
325 Director; or

326 c. The local board of social services of the county or city in which the court has jurisdiction or, at the
327 discretion of the court, to the local board of the county or city in which the juvenile has residence if other
328 than the county or city in which the court has jurisdiction. The board shall accept the juvenile for care and
329 custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to
330 be heard. However, in an emergency in the county or city in which the court has jurisdiction, such local board
331 may be required to temporarily accept a juvenile for a period not to exceed 14 days without prior notice or an
332 opportunity to be heard if the judge entering the placement order describes the emergency and the need for
333 such temporary placement in the order. Nothing in this subdivision shall prohibit the commitment of a
334 juvenile to any local board of social services in the Commonwealth when such local board consents to the
335 commitment. The board to which the juvenile is committed shall have the final authority to determine the
336 appropriate placement for the juvenile. Nothing herein shall limit the authority of the court to review the
337 child's status in foster care in accordance with subsection G of § 16.1-281 or to review the foster care plan
338 through a petition filed pursuant to subsection A of § 16.1-282. Any order authorizing removal from the
339 home and transferring legal custody of a juvenile to a local board of social services as provided in this
340 subdivision shall be entered only upon a finding by the court that reasonable efforts have been made to
341 prevent removal and that continued placement in the home would be contrary to the welfare of the juvenile,
342 and the order shall so state;

343 14. Unless waived by an agreement between the attorney for the Commonwealth and the juvenile and his
344 attorney or other legal representative, upon consideration of the results of an investigation completed
345 pursuant to § 16.1-273, commit the juvenile to the Department of Juvenile Justice, but only if (i) he is 11
346 years of age or older and has been adjudicated delinquent of an act enumerated in subsection B or C of
347 § 16.1-269.1 or (ii) he is 14 years of age or older and the current offense is (a) an offense that would be a
348 felony if committed by an adult, (b) an offense that would be a Class 1 misdemeanor if committed by an adult
349 and the juvenile has previously been found to be delinquent based on an offense that would be a felony if
350 committed by an adult, or (c) an offense that would be a Class 1 misdemeanor if committed by an adult and
351 the juvenile has previously been adjudicated delinquent of three or more offenses that would be a Class 1
352 misdemeanor if committed by an adult, and each such offense was not a part of a common act, transaction or
353 scheme;

354 15. Impose the penalty authorized by § 16.1-284;

355 16. Impose the penalty authorized by § 16.1-284.1;

356 17. Unless waived by an agreement between the attorney for the Commonwealth and the juvenile and his
357 attorney or other legal representative, upon consideration of the results of an investigation completed
358 pursuant to § 16.1-273, impose the penalty authorized by § 16.1-285.1;

359 18. Impose the penalty authorized by § 16.1-278.9; or

360 19. Require the juvenile to participate in a gang-activity prevention program including, but not limited to,
361 programs funded under the Virginia Juvenile Community Crime Control Act pursuant to § 16.1-309.7, if
362 available, when a juvenile has been found delinquent of any of the following violations: § 18.2-51, 18.2-51.1,
363 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138,
364 18.2-146, or 18.2-147, or any violation of a local ordinance adopted pursuant to § 15.2-1812.2.

365 B. If the court finds a juvenile *11 years of age or older* delinquent of any of the following offenses, the
366 court shall require the juvenile to make at least partial restitution or reparation for any property damage, for

367 loss caused by the offense, or for actual medical expenses incurred by the victim as a result of the offense:
 368 § 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128,
 369 18.2-137, 18.2-138, 18.2-146, or 18.2-147; or for any violation of a local ordinance adopted pursuant to
 370 § 15.2-1812.2. The court shall further require the juvenile to participate in a community service project under
 371 such conditions as the court prescribes.

372 **§ 16.1-278.9:1. When a child younger than 11 years of age is found to have committed an act that**
 373 **would be delinquent if committed by a child 11 years of age or older; disposition.**

374 A. If a child younger than 11 years of age is alleged to have committed an act that would be delinquent if
 375 committed by a child 11 years of age or older, such child shall not be proceeded upon as delinquent pursuant
 376 to § 16.1-278.8, and the court shall (i) dismiss any petition alleging such child has committed an act that
 377 would be delinquent if committed by a child 11 years of age or older and (ii) order that the court records
 378 pertaining to such petition be expunged pursuant to subsection C of § 16.1-306. However, the attorney for the
 379 Commonwealth may file a petition alleging that such child is in need of services and if such child is found to
 380 be in need of services, the court may make any orders of disposition authorized under § 16.1-278.4.

381 B. Any funding that is available to provide services to a child 11 years of age or older who is proceeded
 382 upon as delinquent pursuant to § 16.1-278.8 shall also be made available to a child younger than 11 years of
 383 age who is found to have committed an act that would be delinquent if committed by a child 11 years of age
 384 or older in order to provide such child with the same services.

385 **§ 18.2-371. Causing or encouraging acts rendering children delinquent, abused, etc.; penalty;**
 386 **abandoned infant.**

387 Any person 18 years of age or older, including the parent of any child, who (i) willfully contributes to,
 388 encourages, or causes any act, omission, or condition that (a) causes a child younger than 11 years of age to
 389 commit an act that would be delinquent if committed by a child 11 years of age or older; (b) renders a child
 390 delinquent, in need of services, in need of supervision, or abused or neglected as defined in § 16.1-228; or (c)
 391 causes any child to participate in or become a member of a criminal street gang in violation of Article 2.1
 392 (§ 18.2-46.1 et seq.) of Chapter 4 or (ii) engages in consensual sexual intercourse or anal intercourse with or
 393 performs cunnilingus, fellatio, or anilingus upon or by a child 15 or older not his spouse, child, or grandchild
 394 is guilty of a Class 1 misdemeanor. This section shall not be construed as repealing, modifying, or in any way
 395 affecting §§ 18.2-18; and 18.2-19, Article 2.1 (§ 18.2-46.1 et seq.) of Chapter 4, and §§ 18.2-61, 18.2-63, and
 396 18.2-347.

397 If the prosecution under this section is based solely on the accused parent having left the child at a
 398 hospital or emergency medical services agency, it shall be an affirmative defense to prosecution of a parent
 399 under this section that such parent safely delivered the child within the first 30 days of the child's life to (a) a
 400 hospital that provides 24-hour emergency services, (b) an attended emergency medical services agency that
 401 employs emergency medical services personnel, or (c) a newborn safety device located at and operated by
 402 such hospital or emergency medical services agency. In order for the affirmative defense to apply, the child
 403 shall be delivered in a manner reasonably calculated to ensure the child's safety.