

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

[H 1420]

Approved

Be it enacted by the General Assembly of Virginia:
1. That §§ 16.1-228, 16.1-278.8, and 18.2-371 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 16.1-278.9:1 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

57 hospital or emergency medical services agency, it shall be an affirmative defense that such parent safely
 58 delivered the child within 30 days of the child's birth to (i) a hospital that provides 24-hour emergency
 59 services, (ii) an attended emergency medical services agency that employs emergency medical services
 60 personnel, or (iii) a newborn safety device located at and operated by such hospital or emergency
 61 medical services agency. For purposes of terminating parental rights pursuant to § 16.1-283 and
 62 placement for adoption, the court may find such a child is a neglected child upon the ground of
 63 abandonment.

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

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

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

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

74 "Child in need of services" means (i) a child whose behavior, conduct, or condition presents or
 75 results in a serious threat to the well-being and physical safety of the child ~~or~~; (ii) a child ~~under~~ *younger*
 76 *than* the age of 14 whose behavior, conduct, or condition presents or results in a serious threat to the
 77 well-being and physical safety of another person; *or (iii) a child younger than 11 years of age who has*
 78 *committed a delinquent act*; however, no child who in good faith is under treatment solely by spiritual
 79 means through prayer in accordance with the tenets and practices of a recognized church or religious
 80 denomination shall for that reason alone be considered to be a child in need of services, nor shall any
 81 child who habitually remains away from or habitually deserts or abandons his family as a result of what
 82 the court or the local child protective services unit determines to be incidents of physical, emotional, or
 83 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, ~~(i)~~ (a) the conduct complained of must
 85 present a clear and substantial danger to the child's life or health or to the life or health of another
 86 person; ~~(ii)~~; (b) the child or his family is in need of treatment, rehabilitation, or services not presently
 87 being received; and ~~(iii)~~ (c) the intervention of the court is essential to provide the treatment,
 88 rehabilitation, or services needed by the child or 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
 92 any and all educational services and programs that are required to be provided by law and which meet
 93 the child's particular educational needs, (ii) the school system from which the child is absent or other
 94 appropriate agency has made a reasonable effort to effect the child's regular attendance without success,
 95 and (iii) the school system has provided documentation that it has complied with the provisions of
 96 § 22.1-258; or

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

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

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

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

113 "Delinquent child" means a child *11 years of age or older* who has committed a delinquent act or an
 114 adult who has committed a delinquent act prior to his ~~18th~~ *eighteenth* birthday, except where the
 115 jurisdiction of the juvenile court has been terminated under the provisions of § 16.1-269.6.

116 "Department" means the Department of Juvenile Justice and "Director" means the administrative head
 117 in charge thereof or such of his assistants and subordinates as are designated by him to discharge the

118 duties imposed upon him under this law.

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

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

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

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

140 "Foster care services" means the provision of a full range of casework, treatment and community
141 services for a planned period of time to a child who is abused or neglected as defined in § 63.2-100 or
142 in need of services as defined in this section and his family when the child (i) has been identified as
143 needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through
144 an agreement between the local board of social services or a public agency designated by the
145 community policy and management team and the parents or guardians where legal custody remains with
146 the parents or guardians, (iii) has been committed or entrusted to a local board of social services or
147 child welfare agency, (iv) has been placed under the supervisory responsibility of the local board
148 pursuant to § 16.1-293, or (v) is living with a relative participating in the Federal-Funded Kinship
149 Guardianship Assistance program set forth in § 63.2-1305 and developed consistent with 42 U.S.C.
150 § 673 or the State-Funded Kinship Guardianship Assistance program set forth in § 63.2-1306.

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

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

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

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

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

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

178 "Legal custody" means (i) a legal status created by court order which vests in a custodian the right to

179 have physical custody of the child, to determine and redetermine where and with whom he shall live,
 180 the right and duty to protect, train and discipline him and to provide him with food, shelter, education
 181 and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal
 182 status created by court order of joint custody as defined in § 20-107.2.

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

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

194 "Qualified residential treatment program" means a program that (i) provides 24-hour residential
 195 placement services for children in foster care; (ii) has adopted a trauma-informed treatment model that
 196 meets the clinical and other needs of children with serious emotional or behavioral disorders, including
 197 any clinical or other needs identified through assessments conducted pursuant to clause (viii) of this
 198 definition; (iii) employs registered or licensed nursing and other clinical staff who provide care, on site
 199 and within the scope of their practice, and are available 24 hours a day, 7 days a week; (iv) conducts
 200 outreach with the child's family members, including efforts to maintain connections between the child
 201 and his siblings and other family; documents and maintains records of such outreach efforts; and
 202 maintains contact information for any known biological family and fictive kin of the child; (v) whenever
 203 appropriate and in the best interest of the child, facilitates participation by family members in the child's
 204 treatment program before and after discharge and documents the manner in which such participation is
 205 facilitated; (vi) provides discharge planning and family-based aftercare support for at least six months
 206 after discharge; (vii) is licensed in accordance with 42 U.S.C. § 671(a)(10) and accredited by an
 207 organization approved by the federal Secretary of Health and Human Services; and (viii) requires that
 208 any child placed in the program receive an assessment within 30 days of such placement by a qualified
 209 individual that (a) assesses the strengths and needs of the child using an age-appropriate, evidence-based,
 210 validated, and functional assessment tool approved by the Commissioner of Social Services; (b)
 211 identifies whether the needs of the child can be met through placement with a family member or in a
 212 foster home or, if not, in a placement setting authorized by 42 U.S.C. § 672(k)(2), including a qualified
 213 residential treatment program, that would provide the most effective and appropriate level of care for the
 214 child in the least restrictive environment and be consistent with the short-term and long-term goals
 215 established for the child in his foster care or permanency plan; (c) establishes a list of short-term and
 216 long-term mental and behavioral health goals for the child; and (d) is documented in a written report to
 217 be filed with the court prior to any hearing on the child's placement pursuant to § 16.1-281, 16.1-282,
 218 16.1-282.1, or 16.1-282.2.

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

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

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

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

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

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

232 "Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of
 233 § 16.1-269.1 when committed by a juvenile 14 years of age or older.

234 **§ 16.1-278.8. Delinquent juveniles.**

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

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

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

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

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

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

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

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

260 7a. Place the juvenile on probation and order treatment for the abuse or dependence on alcohol or
261 drugs in a program licensed by the Department of Behavioral Health and Developmental Services for the
262 treatment of juveniles for substance abuse provided that (i) the juvenile has received a substance abuse
263 screening and assessment pursuant to § 16.1-273 and that such assessment reasonably indicates that the
264 commission of the offense was motivated by, or closely related to, the habitual use of alcohol or drugs
265 and indicates that the juvenile is in need of treatment for this condition; (ii) the juvenile has not
266 previously been and is not currently being adjudicated for a violent juvenile felony; and (iii) such
267 facility is available. Upon the juvenile's withdrawal, removal, or refusal to comply with the conditions of
268 participation in the program, he shall be brought before the court for a hearing at which the court may
269 impose any other disposition authorized by this section. The court shall review such placements at
270 30-day intervals;

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

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

281 If a curfew is imposed, the juvenile shall surrender his driver's license, which shall be held in the
282 physical custody of the court during any period of curfew restriction. The court shall send an abstract of
283 any order issued under the provisions of this section to the Department of Motor Vehicles, which shall
284 preserve a record thereof. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this
285 chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement
286 officers, attorneys for the Commonwealth and courts. A copy of the court order, upon which shall be
287 noted all curfew restrictions, shall be provided to the juvenile and shall contain such information
288 regarding the juvenile as is reasonably necessary to identify him. The juvenile may operate a motor
289 vehicle under the court order in accordance with its terms.

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

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

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

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

299 12. In case of traffic violations, impose only those penalties that are authorized to be imposed on
300 adults for such violations. However, for those violations punishable by confinement if committed by an

301 adult, confinement shall be imposed only as authorized by this title;

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

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

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

309 c. The local board of social services of the county or city in which the court has jurisdiction or, at
310 the discretion of the court, to the local board of the county or city in which the juvenile has residence if
311 other than the county or city in which the court has jurisdiction. The board shall accept the juvenile for
312 care and custody, provided that it has been given reasonable notice of the pendency of the case and an
313 opportunity to be heard. However, in an emergency in the county or city in which the court has
314 jurisdiction, such local board may be required to temporarily accept a juvenile for a period not to exceed
315 14 days without prior notice or an opportunity to be heard if the judge entering the placement order
316 describes the emergency and the need for such temporary placement in the order. Nothing in this
317 subdivision shall prohibit the commitment of a juvenile to any local board of social services in the
318 Commonwealth when such local board consents to the commitment. The board to which the juvenile is
319 committed shall have the final authority to determine the appropriate placement for the juvenile. Nothing
320 herein shall limit the authority of the court to review the child's status in foster care in accordance with
321 subsection G of § 16.1-281 or to review the foster care plan through a petition filed pursuant to
322 subsection A of § 16.1-282. Any order authorizing removal from the home and transferring legal custody
323 of a juvenile to a local board of social services as provided in this subdivision shall be entered only
324 upon a finding by the court that reasonable efforts have been made to prevent removal and that
325 continued placement in the home would be contrary to the welfare of the juvenile, and the order shall so
326 state;

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

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

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

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

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

344 19. Require the juvenile to participate in a gang-activity prevention program including, but not
345 limited to, programs funded under the Virginia Juvenile Community Crime Control Act pursuant to
346 § 16.1-309.7, if available, when a juvenile has been found delinquent of any of the following violations:
347 § 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,
348 18.2-128, 18.2-137, 18.2-138, 18.2-146, or 18.2-147, or any violation of a local ordinance adopted
349 pursuant to § 15.2-1812.2.

350 B. If the court finds a juvenile *11 years of age or older* delinquent of any of the following offenses,
351 the court shall require the juvenile to make at least partial restitution or reparation for any property
352 damage, for loss caused by the offense, or for actual medical expenses incurred by the victim as a result
353 of the offense: § 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,
354 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or 18.2-147; or for any violation of a local ordinance
355 adopted pursuant to § 15.2-1812.2. The court shall further require the juvenile to participate in a
356 community service project under such conditions as the court prescribes.

357 **§ 16.1-278.9:1. Delinquent act committed by a juvenile younger than 11 years of age; disposition.**

358 *If a juvenile younger than 11 years of age is found to have committed a delinquent act, such juvenile*
359 *shall not be proceeded upon as delinquent pursuant to § 16.1-278.8; however, the court may make any*
360 *orders of disposition authorized under § 16.1-278.4 or 16.1-278.5.*

361 **§ 18.2-371. Causing or encouraging acts rendering children delinquent, abused, etc.; penalty;**

362 abandoned infant.

363 Any person 18 years of age or older, including the parent of any child, who (i) willfully contributes
364 to, encourages, or causes any act, omission, or condition that renders a child delinquent, in need of
365 services, in need of supervision, or abused or neglected as defined in § 16.1-228 *or willfully contributes*
366 *to, encourages, or causes any act, omission, or condition that causes a child younger than 11 years of*
367 *age to commit a delinquent act* or (ii) engages in consensual sexual intercourse or anal intercourse with
368 or performs cunnilingus, fellatio, or anilingus upon or by a child 15 or older not his spouse, child, or
369 grandchild is guilty of a Class 1 misdemeanor. This section shall not be construed as repealing,
370 modifying, or in any way affecting §§ 18.2-18, 18.2-19, 18.2-61, 18.2-63, and 18.2-347.

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