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SENATE BILL NO. 1204

Offered January 10, 2001

Prefiled January 10, 2001

A BILL to amend and reenact §§ 16.1-228, 16.1-283 and 18.2-371.1 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 16.1-241.4 and 63.1-56.4, relating to affirmative defense to prosecution for abuse and neglect; infant receiving facilities; emergency custody of abandoned children.

Patrons—Forbes and Martin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-228, 16.1-283 and 18.2-371.1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 16.1-241.4 and 63.1-56.4, as follows:

§ 16.1-228. Definitions.

When used in this chapter, unless the context otherwise requires:

"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;

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;

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

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

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.

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

"Adult" means a person eighteen years of age or older.

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

"Boot camp" means a short term secure or nonsecure juvenile residential facility with highly structured components including, but not limited to, military style drill and ceremony, physical labor, education and rigid discipline, and no less than six months of intensive aftercare.

"Child," "juvenile" or "minor" means a person less than eighteen years of age.

"Child welfare agency" means a child-placing agency, child-caring institution or independent foster home as defined in § 63.1-195.

"Child in need of services" means a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child; 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 a child in need of services, nor shall any child who habitually remains away from or habitually deserts or abandons his family as a result of what the court or the local child protective services unit determines to be incidents of physical, emotional or sexual abuse in the home be considered a child in need of services for that reason alone.

However, to find that a child falls within these provisions, (i) the conduct complained of must present a clear and substantial danger to the child's life or health or (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

"Child in need of supervision" means:

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SB1204

59 1. A child who, while subject to compulsory school attendance, is habitually and without justification
60 absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of
61 any and all educational services and programs that are required to be provided by law and which meet
62 the child's particular educational needs, (ii) the school system from which the child is absent or other
63 appropriate agency has made a reasonable effort to effect the child's regular attendance without success,
64 and (iii) the school system has provided documentation that it has complied with the provisions of
65 § 22.1-258; or

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

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

75 "Delinquent act" means (i) an act designated a crime under the law of this Commonwealth, or an
76 ordinance of any city, county, town or service district, or under federal law, (ii) a violation of
77 § 18.2-308.7, or (iii) a violation of a court order as provided for in § 16.1-292, but shall not include an
78 act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a crime only if
79 committed by a child. For purposes of §§ 16.1-241 and 16.1-278.9, the term shall include a refusal to
80 take a blood or breath test in violation of § 18.2-268.2 or a similar ordinance of any county, city or
81 town.

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

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

88 "Family abuse" means any act involving violence, force, or threat including any forceful detention,
89 which results in physical injury or places one in reasonable apprehension of serious bodily injury and
90 which is committed by a person against such person's family or household member.

91 "Family or household member" means (i) the person's spouse, whether or not he or she resides in the
92 same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same
93 home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters,
94 grandparents and grandchildren, regardless of whether such persons reside in the same home with the
95 person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and
96 sisters-in-law who reside in the same home with the person, (v) any individual who has a child in
97 common with the person, whether or not the person and that individual have been married or have
98 resided together at any time, or (vi) any individual who cohabits or who, within the previous twelve
99 months, cohabited with the person, and any children of either of them then residing in the same home
100 with the person.

101 "Foster care services" means the provision of a full range of casework, treatment and community
102 services for a planned period of time to a child who is abused or neglected as defined in § 63.1-248.2 or
103 in need of services as defined in this section and his family when the child (i) has been identified as
104 needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through
105 an agreement between the local board of social services or a public agency designated by the
106 community policy and management team and the parents or guardians where legal custody remains with
107 the parents or guardians, (iii) has been committed or entrusted to a local board of social services or
108 child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board
109 pursuant to § 16.1-293.

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

112 "Infant receiving facility" means any licensed hospital, as defined in § 32.1-123, the Medical College
113 of Virginia Hospitals, and the University of Virginia Hospitals. Additionally, the following facilities may
114 opt to become infant receiving facilities by complying with the procedures developed by the State Board
115 of Health and the State Board of Social Services: local departments of health, local departments of
116 social services, or rescue squads or fire departments that include emergency medical technicians. Any of
117 these facilities shall only meet this definition during their hours of operation.

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

transfer of a child to a juvenile facility.

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

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

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

"Permanent foster care placement" means the place of residence in which a child resides and in which he has been placed pursuant to the provisions of §§ 63.1-56 and 63.1-206.1 with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or § 63.1-248.9. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

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

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

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

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

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

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

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

§ 16.1-241.4. Emergency custody of certain abandoned children.

A. An infant receiving facility shall, without a court order, take temporary physical custody of a child who is, or appears to be, not more than seventy-two hours old if:

- 1. The child is voluntarily left with the facility by the child's parent; and*
- 2. The parent does not express an intent to return for the child.*

There is a presumption that the parent who leaves the child in accordance with this section intended to leave the child and consented to termination of parental rights.

B. The facility shall perform any act reasonably necessary to protect the physical health or safety of the child. Facility personnel acting in accordance with this section shall be immune from civil liability or criminal prosecution unless the actions of such personnel constitute gross negligence or willful misconduct.

C. Except where there is actual or suspected child abuse or neglect or kidnapping, the person leaving the infant is not required to disclose his or her identity and may leave at any time and shall not be pursued or followed. The facility personnel shall attempt to obtain from the person information concerning the infant's background and medical history, which shall be forwarded to the local board of social services. Additionally, the facility personnel shall attempt to explain and give the person the following:

1. A Personal Identification Number (PIN), which is a number unique to that person. The PIN shall be the only means of identification of the person.

2. The toll-free telephone number for the central information center of the Department of Social Services, where the person may call and be identified by his PIN. The person may leave any information about the infant, including information regarding the health, medical or family history at the central information center.

D. Immediately after a facility takes custody of a child, the facility shall notify the local board of social services. The local board of social services shall assume the care, control and custody of the child immediately upon receipt of such notice.

E. Whenever a child is taken into custody without a court order under this section, the local board of social services shall, not later than the next business day, request the court to:

- 1. Enter a preliminary protective order pursuant to § 16.1-253 finding that the child is a child in*

182 *need of services;*

183 2. *Hold an initial hearing not later than the next business day after the child is taken into custody;*
184 *and*

185 3. *Appoint a guardian ad litem for the child.*

186 F. *The Commonwealth shall reimburse the facility for the facility's actual expenses in accepting and*
187 *caring for the child.*

188 § 16.1-283. Termination of residual parental rights.

189 A. The residual parental rights of a parent or parents may be terminated by the court as hereinafter
190 provided in a separate proceeding if the petition specifically requests such relief. No petition seeking
191 termination of residual parental rights shall be accepted by the court prior to the filing of a foster care
192 plan, pursuant to § 16.1-281, which documents termination of residual parental rights as being in the
193 best interests of the child. The court may hear and adjudicate a petition for termination of parental rights
194 in the same proceeding in which the court has approved a foster care plan which documents that
195 termination is in the best interests of the child. The court may terminate the residual parental rights of
196 one parent without affecting the rights of the other parent. The local board of social services or a
197 licensed child-placing agency need not have identified an available and eligible family to adopt a child
198 for whom termination of parental rights is being sought prior to the entry of an order terminating
199 parental rights.

200 Any order terminating residual parental rights shall be accompanied by an order continuing or
201 granting custody to a local board of social services, to a licensed child-placing agency or the granting of
202 custody or guardianship to a relative or other interested individual, subject to the provisions of
203 subsection A1 of this section. However, in such cases the court shall give a consideration to granting
204 custody to relatives of the child, including grandparents. An order continuing or granting custody to a
205 local board of social services or to a licensed child-placing agency shall indicate whether that board or
206 agency shall have the authority to place the child for adoption and consent thereto.

207 The summons shall be served upon the parent or parents and the other parties specified in
208 § 16.1-263. Written notice of the hearing shall also be provided to the foster parents of the child, a
209 relative providing care for the child, and any preadoptive parents for the child informing them that they
210 may appear as witnesses at the hearing to give testimony and otherwise participate in the proceeding.
211 The persons entitled to notice and an opportunity to be heard need not be made parties to the
212 proceedings. The summons or notice of hearing shall clearly state the consequences of a termination of
213 residual parental rights. Service shall be made pursuant to § 16.1-264.

214 A1. Any order transferring custody of the child to a relative or other interested individual pursuant to
215 subsection A of this section shall be entered only upon a finding, based upon a preponderance of the
216 evidence, that the relative or other interested individual is one who, after an investigation as directed by
217 the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is
218 willing to have a positive, continuous relationship with the child; (iii) is committed to providing a
219 permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from
220 abuse and neglect; and the order shall so state. The court's order transferring custody to a relative or
221 other interested individual should further provide, as appropriate, for any terms and conditions which
222 would promote the child's interest and welfare.

223 B. The residual parental rights of a parent or parents of a child found by the court to be neglected or
224 abused and placed in foster care as a result of (i) court commitment; (ii) an entrustment agreement
225 entered into by the parent or parents; or (iii) other voluntary relinquishment by the parent or parents
226 may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best
227 interests of the child and that:

228 1. The neglect or abuse suffered by such child presented a serious and substantial threat to his life,
229 health or development; and

230 2. It is not reasonably likely that the conditions which resulted in such neglect or abuse can be
231 substantially corrected or eliminated so as to allow the child's safe return to his parent or parents within
232 a reasonable period of time. In making this determination, the court shall take into consideration the
233 efforts made to rehabilitate the parent or parents by any public or private social, medical, mental health
234 or other rehabilitative agencies prior to the child's initial placement in foster care.

235 Proof of any of the following shall constitute prima facie evidence of the conditions set forth in
236 subdivision B 2 hereof:

237 a. The parent or parents are suffering from a mental or emotional illness or mental deficiency of such
238 severity that there is no reasonable expectation that such parent will be able to undertake responsibility
239 for the care needed by the child in accordance with his age and stage of development;

240 b. The parent or parents have habitually abused or are addicted to intoxicating liquors, narcotics or
241 other dangerous drugs to the extent that proper parental ability has been seriously impaired and the
242 parent, without good cause, has not responded to or followed through with recommended and available
243 treatment which could have improved the capacity for adequate parental functioning; or

c. The parent or parents, without good cause, have not responded to or followed through with appropriate, available and reasonable rehabilitative efforts on the part of social, medical, mental health or other rehabilitative agencies designed to reduce, eliminate or prevent the neglect or abuse of the child.

C. The residual parental rights of a parent or parents of a child placed in foster care as a result of court commitment, an entrustment agreement entered into by the parent or parents or other voluntary relinquishment by the parent or parents may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The parent or parents have, without good cause, failed to maintain continuing contact with and to provide or substantially plan for the future of the child for a period of six months after the child's placement in foster care notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to communicate with the parent or parents and to strengthen the parent-child relationship. Proof that the parent or parents have failed without good cause to communicate on a continuing and planned basis with the child for a period of six months shall constitute prima facie evidence of this condition; or

2. The parent or parents, without good cause, have been unwilling or unable within a reasonable period of time not to exceed twelve months from the date the child was placed in foster care to remedy substantially the conditions which led to or required continuation of the child's foster care placement, notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to such end. Proof that the parent or parents, without good cause, have failed or been unable to make substantial progress towards elimination of the conditions which led to or required continuation of the child's foster care placement in accordance with their obligations under and within the time limits or goals set forth in a foster care plan filed with the court or any other plan jointly designed and agreed to by the parent or parents and a public or private social, medical, mental health or other rehabilitative agency shall constitute prima facie evidence of this condition. The court shall take into consideration the prior efforts of such agencies to rehabilitate the parent or parents prior to the placement of the child in foster care.

D. The residual parental rights of a parent or parents of a child found by the court to be neglected or abused upon the ground of abandonment may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The child was abandoned under such circumstances that either the identity or the whereabouts of the parent or parents cannot be determined; and

2. The child's parent or parents, guardian or relatives have not come forward to identify such child and claim a relationship to the child within three months following the issuance of an order by the court placing the child in foster care; and

3. Diligent efforts have been made to locate the child's parent or parents without avail.

E. The residual parental rights of a parent or parents of a child who is in the custody of a local board or licensed child-placing agency may be terminated by the court if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of this Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction which constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred or the other parent of the child; or (iii) the parent has been convicted of an offense under the laws of this Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction which constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense. As used in this section, "serious bodily injury" means bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty. The local board or other child welfare agency having custody of the child shall not be required by the court to make reasonable efforts to reunite the child with a parent who has been convicted of one of the felonies specified in this subsection.

F. The local board or licensed child-placing agency to which authority is given to place the child for adoption and consent thereto after an order terminating parental rights is entered shall file a written Adoption Progress Report with the juvenile court on the progress being made to place the child in an adoptive home. The report shall be filed with the court every six months from the date of the final order terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is given to the local board or licensed child-placing agency to place the child for adoption, the juvenile

305 court shall schedule a date by which the board or agency shall file the first written Adoption Progress
306 Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to
307 the guardian ad litem for the child. The court may schedule a hearing on the report with or without the
308 request of a party.

309 G. Notwithstanding any other provisions of this section, residual parental rights shall not be
310 terminated if it is established that the child, if he is fourteen years of age or older or otherwise of an
311 age of discretion as determined by the court, objects to such termination. However, residual parental
312 rights of a child fourteen years of age or older may be terminated over the objection of the child, if the
313 court finds that any disability of the child reduces the child's developmental age and that the child is not
314 otherwise of an age of discretion.

315 H. *Notwithstanding any other provisions of this section, if the child is in the custody of the local*
316 *board of social services pursuant to § 16.1-241.1, the residual parental rights of the parents of the child*
317 *shall be terminated by the court if the court finds that either of the parents has not contacted the*
318 *central information center of the State Department of Social Services and expressed an intent to regain*
319 *custody of their child within thirty days of the delivery of the child to the infant receiving facility.*

320 § 18.2-371.1. Abuse and neglect of children; penalty.

321 A. Any parent, guardian, or other person responsible for the care of a child under the age of eighteen
322 who by willful act or omission or refusal to provide any necessary care for the child's health causes or
323 permits serious injury to the life or health of such child shall be guilty of a Class 4 felony. For purposes
324 of this subsection, "serious injury" shall include but not be limited to (i) disfigurement, (ii) a fracture,
325 (iii) a severe burn or laceration, (iv) mutilation, (v) maiming, (vi) forced ingestion of dangerous
326 substances, or (vii) life-threatening internal injuries.

327 B. Any parent, guardian, or other person responsible for the care of a child under the age of eighteen
328 whose willful act or omission in the care of such child was so gross, wanton and culpable as to show a
329 reckless disregard for human life shall be guilty of a Class 6 felony.

330 C. Any parent, guardian or other person having care, custody, or control of a minor child who in
331 good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and
332 practices of a recognized church or religious denomination shall not, for that reason alone, be considered
333 in violation of this section.

334 D. *It shall be an affirmative defense to prosecution for abuse or neglect that a parent voluntarily*
335 *delivered the child to, and left the child at, an infant receiving facility, as defined in § 16.1-228, in*
336 *accordance with § 16.1-241.4, if such abuse or neglect prosecution is based solely upon the parent's*
337 *abandonment of the child to an infant receiving facility.*

338 § 63.1-56.4. Responsibilities after receiving notice from the infant receiving facility.

339 A. *Immediately after receiving notice from the infant receiving facility, as defined in § 16.1-228,*
340 *pursuant to § 16.1-241.4, the local department of social services shall, not later than the next business*
341 *day, request the court to enter a preliminary protective order pursuant to § 16.1-253. The local board of*
342 *social services shall assume the care, control and custody of the child immediately upon receipt of such*
343 *notice.*

344 B. *The local department of social services shall not initiate a child protective services investigation*
345 *when an infant comes into its custody pursuant to §16.1-241.4, unless there is actual or suspected child*
346 *abuse or neglect, other than the abandonment. Immediately after receiving notice from the infant*
347 *receiving facility, the local department shall contact the local law-enforcement agency for assistance in*
348 *assuring that the infant is not a missing infant. The law-enforcement agency shall immediately submit an*
349 *inquiry to the Missing Children Information Clearinghouse.*

350 C. *Each local department of social services shall maintain and update on a monthly basis a report*
351 *of the number of children who have been abandoned pursuant to §16.1-241.4 and forward the*
352 *information to the Department's central information center. The local department of social services shall*
353 *give the adoptive parents of the infant any information received from the central information center of*
354 *the Department.*

355 **2. That the State Board of Social Services and the State Board of Health shall produce a public**
356 **information campaign to inform the public concerning the emergency custody provisions contained**
357 **in § 16.1-241.4. Additionally, the State Board of Social Services and the State Board of Health**
358 **shall create training programs and guidelines for facilities that opt to become infant receiving**
359 **facilities pursuant to § 16.1-228, including developing a window sticker or decal to be displayed in**
360 **a manner that will inform the public that such facility is an infant receiving facility.**

361 **3. That the Board of Social Services shall develop and maintain a central information center with**
362 **a toll-free telephone number, which may be accessed by a person with a PIN, as defined in**
363 **§ 16.1-241.4. Upon receipt of information regarding the infant, the central information center shall**
364 **immediately forward such information to the local department. Additionally, the central**
365 **information center shall provide each infant receiving facility a list of PINs and information to be**
366 **provided to the person regarding use of the PIN.**

367 4. That the Department of Social Services shall submit an annual report to the General Assembly,
368 beginning December 1, 2001, that compiles the number of children abandoned annually pursuant
369 to this act.

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