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HOUSE BILL NO. 1041

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 9, 2004)

(Patron Prior to Substitute—Delegate Saxman)

*A BILL to amend and reenact §§ 16.1-228 and 63.2-100 of the Code of Virginia, relating to abused or neglected children.***Be it enacted by the General Assembly of Virginia:****1. That §§ 16.1-228 and 63.2-100 of the Code of Virginia are amended and reenacted 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; or

6. Whose parents or other person responsible for his care knowingly allows him to be in the presence of the sale, or manufacture or attempted manufacture of, a controlled substance or marijuana, that constitutes a felony violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.

"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 18 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 18 years of age.

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

"Child in need of services" means (i) a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child or (ii) a child under the age of 14 whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of another person; 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 to the life or health of another person, (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:

1. A child who, while subject to compulsory school attendance, is habitually and without justification absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of

60 any and all educational services and programs that are required to be provided by law and which meet
61 the child's particular educational needs, (ii) the school system from which the child is absent or other
62 appropriate agency has made a reasonable effort to effect the child's regular attendance without success,
63 and (iii) the school system has provided documentation that it has complied with the provisions of
64 § 22.1-258; or

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

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

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

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

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

87 "Family abuse" means any act involving violence, force, or threat including, but not limited to, any
88 forceful detention, which results in bodily injury or places one in reasonable apprehension of bodily
89 injury and which is committed by a person against such person's family or household member.

90 "Family or household member" means (i) the person's spouse, whether or not he or she resides in the
91 same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same
92 home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters,
93 half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in
94 the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law,
95 daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v)
96 any individual who has a child in common with the person, whether or not the person and that
97 individual have been married or have resided together at any time, or (vi) any individual who cohabits
98 or who, within the previous 12 months, cohabited with the person, and any children of either of them
99 then residing in the same home with the person.

100 "Foster care services" means the provision of a full range of casework, treatment and community
101 services for a planned period of time to a child who is abused or neglected as defined in § 63.2-100 or
102 in need of services as defined in this section and his family when the child (i) has been identified as
103 needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through
104 an agreement between the local board of social services or a public agency designated by the
105 community policy and management team and the parents or guardians where legal custody remains with
106 the parents or guardians, (iii) has been committed or entrusted to a local board of social services or
107 child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board
108 pursuant to § 16.1-293.

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

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

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

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

119 "Legal custody" means (i) a legal status created by court order which vests in a custodian the right to
120 have physical custody of the child, to determine and redetermine where and with whom he shall live,
121 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 §§ 63.2-900 and 63.2-908 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 § 63.2-1517. 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.

"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.

"Secure facility" or "detention home" means a local, regional or state public or private locked residential facility that 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.

"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 14 years of age or older.

§ 63.2-100. Definitions.

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

"Abused or neglected child" means any child less than 18 years of age:

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 act of sexual exploitation or 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; or

6. Whose parents or other person responsible for his care knowingly allows him to be in the presence of the sale, or manufacture or attempted manufacture of a controlled substance or marijuana, that constitutes a felony violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.

"Adoptive home" means any family home selected and approved by a parent, local board or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult.

"Adult day care center" means any facility that is either operated for profit or that desires licensure and that provides supplementary care and protection during only a part of the day to four or more aged, infirm or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, and (ii) the home or residence of an individual who cares for only persons related to him by blood or marriage. Included in this definition are any two or more places, establishments or institutions owned, operated or controlled by a single entity and providing such supplementary care and protection to a combined total of four or more aged, infirm or disabled adults.

"Adult exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage.

"Adult foster care" means room and board, supervision, and special services to an adult who has a

183 physical or mental condition. Adult foster care may be provided by a single provider for up to three
184 adults.

185 "Adult neglect" means that an adult is living under such circumstances that he is not able to provide
186 for himself or is not being provided services necessary to maintain his physical and mental health and
187 that the failure to receive such necessary services impairs or threatens to impair his well-being.

188 "Adult protective services" means services provided by the local department that are necessary to
189 protect an adult from abuse, neglect or exploitation.

190 "Assisted living care" means a level of service provided by an assisted living facility for adults who
191 may have physical or mental impairments and require at least a moderate level of assistance with
192 activities of daily living.

193 "Assisted living facility" means any congregate residential setting that provides or coordinates
194 personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for
195 the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for
196 in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board
197 of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but
198 including any portion of such facility not so licensed; (ii) the home or residence of an individual who
199 cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a
200 facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an
201 educational program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the
202 Department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of this title, but
203 including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of
204 age or older or the disabled that provides no more than basic coordination of care services and is funded
205 by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or
206 by the Virginia Housing Development Authority. Included in this definition are any two or more places,
207 establishments or institutions owned or operated by a single entity and providing maintenance or care to
208 a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the
209 protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or
210 disabled individual.

211 "Auxiliary grants" means cash payments made to certain aged, blind or disabled individuals who
212 receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive
213 these benefits except for excess income.

214 "Birth family" or "birth sibling" means the child's biological family or biological sibling.

215 "Birth parent" means the child's biological parent and, for purposes of adoptive placement, means
216 parent(s) by previous adoption.

217 "Board" means the State Board of Social Services.

218 "Child" means any natural person under 18 years of age.

219 "Child day center" means a child day program offered to (i) two or more children under the age of
220 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or
221 more children at any location.

222 "Child day program" means a regularly operating service arrangement for children where, during the
223 absence of a parent or guardian, a person or organization has agreed to assume responsibility for the
224 supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

225 "Child-placing agency" means any person who places children in foster homes, adoptive homes or
226 independent living arrangements pursuant to § 63.2-1819 or a local board that places children in foster
227 homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903 and 63.2-1221. Officers, employees, or
228 agents of the Commonwealth, or any locality acting within the scope of their authority as such, who
229 serve as or maintain a child-placing agency, shall not be required to be licensed.

230 "Child-protective services" means the identification, receipt and immediate response to complaints
231 and reports of alleged child abuse or neglect for children under 18 years of age. It also includes
232 assessment, and arranging for and providing necessary protective and rehabilitative services for a child
233 and his family when the child has been found to have been abused or neglected or is at risk of being
234 abused or neglected.

235 "Child support services" means any civil, criminal or administrative action taken by the Division of
236 Child Support Enforcement to locate parents; establish paternity; and establish, modify, enforce, or
237 collect child support, or child and spousal support.

238 "Child-welfare agency" means a child day center, child-placing agency, children's residential facility,
239 family day home, family day system, or independent foster home.

240 "Children's residential facility" means any facility, child-caring institution, or group home that is
241 maintained for the purpose of receiving children separated from their parents or guardians for full-time
242 care, maintenance, protection and guidance, except:

243 1. A licensed or accredited educational institution whose pupils, in the ordinary course of events,
244 return annually to the homes of their parents or guardians for not less than two months of summer

vacation;

2. An establishment required to be licensed as a summer camp by § 35.1-18; and

3. A licensed or accredited hospital legally maintained as such.

"Commissioner" means the Commissioner of the Department, his designee or authorized representative.

"Department" means the State Department of Social Services.

"Department of Health and Human Services" means the Department of Health and Human Services of the United States government or any department or agency thereof that may hereafter be designated as the agency to administer the Social Security Act, as amended.

"Disposable income" means that part of the income due and payable of any individual remaining after the deduction of any amount required by law to be withheld.

"Energy assistance" means benefits to assist low-income households with their home heating and cooling needs, including, but not limited to, purchase of materials or substances used for home heating, repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through twelve children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home shall disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving six through twelve children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.

"Family day system" means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board or the public agency designated by the community policy and management team where legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"General relief" means money payments and other forms of relief made to those persons mentioned in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with § 63.2-401.

"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person and (ii) a home in which is received a child or children committed under the provisions of subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8.

"Independent living" means a program of services and activities for children in foster care who are 16 years of age or older, and persons who are former foster care children between the ages of 18 and 21, that prepares them for the successful transition from foster care to self sufficiency.

"Independent living placement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the residence.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other

entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Local board" means the local board of social services representing one or more counties or cities.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Local director" means the director or his designated representative of the local department of the city or county.

"Merit system plan" means those regulations adopted by the Board in the development and operation of a system of personnel administration meeting requirements of the federal Office of Personnel Management.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to the aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services; child care; and general relief.

"Qualified assessor" means an entity contracting with the Department of Medical Assistance Services to perform nursing facility pre-admission screening or to complete the uniform assessment instrument for a home and community-based waiver program, including an independent physician contracting with the Department of Medical Assistance Services to complete the uniform assessment instrument for residents of assisted living facilities, or any hospital that has contracted with the Department of Medical Assistance Services to perform nursing facility pre-admission screenings.

"Registered family day home" means any family day home that has met the standards for voluntary registration for such homes pursuant to regulations adopted by the Board and that has obtained a certificate of registration from the Commissioner.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. The definition of "residential living care" includes the services provided by independent living facilities that voluntarily become licensed.

"Social services" means foster care, adoption, adoption assistance, adult services, adult protective services, child-protective services, domestic violence services, or any other services program implemented in accordance with regulations adopted by the Board.

"Special order" means an order imposing an administrative sanction issued to any party licensed pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A special order shall be considered a case decision as defined in § 2.2-4001.

"Temporary Assistance for Needy Families" or "TANF" means the program administered by the Department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the Temporary Assistance for Needy Families program for families in which both natural or adoptive parents of a child reside in the home and neither parent is exempt from the Virginia Initiative for Employment Not Welfare (VIEW) participation under § 63.2-609.

"Title IV-E Foster Care" means a federal program authorized under §§ 472 and 473 of the Social Security Act, as amended, and administered by the Department through which foster care is provided on behalf of qualifying children.