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SENATE BILL NO. 1168

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services on January 30, 2015)

(Patrons Prior to Substitute—Senators Hanger, Barker [SB 1124], Favola [SB 780], Marsden [SB 1029], and Wexton [SB 1069])

A BILL to amend and reenact § 63.2-100 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 63.2-1701.1 and 63.2-1701.2, relating to family day homes and child day centers; licensure; report to Department of Social Services.

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-100 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 63.2-1701.1 and 63.2-1701.2 as follows:

§ 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, 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. 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 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; or

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 § 55-79.2, 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 violent sexual offender pursuant to § 9.1-902.

If a civil proceeding under this title is based solely on the parent having left the child at a hospital or rescue squad, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

"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.

SENATE SUBSTITUTE

SB1168S1

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

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

70 "Adult foster care" means room and board, supervision, and special services to an adult who has a
71 physical or mental condition. Adult foster care may be provided by a single provider for up to three
72 adults.

73 "Adult neglect" means that an adult is living under such circumstances that he is not able to provide
74 for himself or is not being provided services necessary to maintain his physical and mental health and
75 that the failure to receive such necessary services impairs or threatens to impair his well-being.
76 However, no adult shall be considered neglected solely on the basis that such adult is receiving religious
77 nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such
78 treatment or care is performed in good faith and in accordance with the religious practices of the adult
79 and there is a written or oral expression of consent by that adult.

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

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

85 "Assisted living facility" means any congregate residential setting that provides or coordinates
86 personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for
87 the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for
88 in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board
89 of Health or the Department of Behavioral Health and Developmental Services, but including any
90 portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or
91 maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility
92 serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational
93 program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the Department as
94 a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.), but including any portion of the
95 facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled
96 that provides no more than basic coordination of care services and is funded by the U.S. Department of
97 Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing
98 Development Authority. Included in this definition are any two or more places, establishments or
99 institutions owned or operated by a single entity and providing maintenance or care to a combined total
100 of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general
101 supervision and oversight of the physical and mental well-being of an aged, infirm or disabled
102 individual.

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

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

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

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

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

111 "Child day center" means a child day program offered to (i) two or more children under the age of
112 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or
113 more children at any location.

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

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

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

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

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

132 "Children's residential facility" means any facility, child-caring institution, or group home that is
133 maintained for the purpose of receiving children separated from their parents or guardians for full-time
134 care, maintenance, protection and guidance, or for the purpose of providing independent living services
135 to persons between 18 and 21 years of age who are in the process of transitioning out of foster care.
136 Children's residential facility shall not include:

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

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

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

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

144 "Department" means the State Department of Social Services.

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

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

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

156 "Family day home" means a child day program offered in the residence of the provider or the home
157 of any of the children in care for one through 12 children under the age of 13, ~~exclusive of including~~
158 *the provider's own children and any children who reside in the home who are under the age of six and*
159 *are present in the home while care is being provided*, when at least one child receives care for
160 compensation. The provider of a licensed or registered family day home shall disclose to the parents or
161 guardians of children in their care the percentage of time per week that persons other than the provider
162 will care for the children. Family day homes serving six through 12 children, ~~exclusive of including~~
163 *the provider's own children and any children who reside in the home who are under the age of six and are*
164 *present in the home while care is being provided*, shall be licensed. However, no family day home shall
165 care for more than four children under the age of two, including the provider's own children and any
166 children who reside in the home, unless the family day home is licensed or voluntarily registered.
167 However, a family day home where *all of the children in care (i) are all grandchildren of the provider*
168 *or (ii) reside in the home* shall not be ~~required to be licensed~~ *considered a family day home*.

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

175 "Foster care placement" means placement of a child through (i) an agreement between the parents or
176 guardians and the local board where legal custody remains with the parents or guardians or (ii) an
177 entrustment or commitment of the child to the local board or licensed child-placing agency.

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

180 "General relief" means money payments and other forms of relief made to those persons mentioned
181 in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with
182 § 63.2-401.

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

189 "Independent living" means a planned program of services designed to assist a child age 16 and over
190 and persons who are former foster care children between the ages of 18 and 21 in transitioning to
191 self-sufficiency.

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

196 "Independent living services" means services and activities provided to a child in foster care 14 years
197 of age or older who was committed or entrusted to a local board of social services, child welfare
198 agency, or private child-placing agency. "Independent living services" may also mean services and
199 activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached
200 the age of 21 years or (ii) is at least 18 years of age but who has not yet reached 21 years of age and
201 who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of
202 a local board of social services. Such services shall include counseling, education, housing, employment,
203 and money management skills development, access to essential documents, and other appropriate
204 services to help children or persons prepare for self-sufficiency.

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

208 "Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster
209 care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other
210 entity authorized to make such placements in accordance with the laws of the foreign country under
211 which it operates.

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

217 "Kinship care" means the full-time care, nurturing, and protection of children by relatives.

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

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

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

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

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

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

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

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

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

244 "Social services" means foster care, adoption, adoption assistance, child-protective services, domestic

245 violence services, or any other services program implemented in accordance with regulations adopted by
246 the Board. Social services also includes adult services pursuant to Article 4 (§ 51.5-144 et seq.) of
247 Chapter 14 of Title 51.5 and adult protective services pursuant to Article 5 (§ 51.5-148) of Chapter 14
248 of Title 51.5 provided by local departments of social services in accordance with regulations and under
249 the supervision of the Commissioner for Aging and Rehabilitative Services.

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

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

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

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

263 **§ 63.2-1701.1. Local government to report business licenses issued to child day centers and family**
264 **day homes.**

265 *The commissioner of revenue or other local business license official shall report to the Department*
266 *semiannually the name, address, and contact information of any child day center or family day home to*
267 *which a business license was issued since the previous report.*

268 **§ 63.2-1701.2. Unlicensed, unregistered family day homes; notice to the Department; inspections.**

269 *Every family day home that is not licensed or voluntarily registered with the Department shall, prior*
270 *to beginning such operation and at such intervals thereafter as may be required by the Department,*
271 *submit to the Commissioner a written declaration of intent to operate such family day home, which shall*
272 *include a statement of the number of children for whom the family day home will provide care and such*
273 *other information as the Commissioner may require.*

274 **2. That the provisions of this act that amend the definition of "family day home" in § 63.2-100 of**
275 **the Code of Virginia shall become effective on July 1, 2016.**