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SENATE BILL NO. 1757

Offered January 18, 2019

A BILL to amend and reenact §§ 16.1-228 and 20-124.3 of the Code of Virginia, relating to custody and visitation arrangements; best interests of the child; domestic abuse; child abuse.

Patrons—Surovell and Chase

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-228 and 20-124.3 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-228. Definitions.

~~When~~ As used in this chapter, unless the context otherwise 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;

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;

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 § 55-79.2, 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; or

7. Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in the Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7102 et seq., and in the 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 hospital or emergency medical services agency, 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 emergency medical services agency that employs emergency medical services personnel, 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 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 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

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59 whose behavior, conduct or condition presents or results in a serious threat to the well-being and
60 physical safety of another person; however, no child who in good faith is under treatment solely by
61 spiritual means through prayer in accordance with the tenets and practices of a recognized church or
62 religious denomination shall for that reason alone be considered to be a child in need of services, nor
63 shall any child who habitually remains away from or habitually deserts or abandons his family as a
64 result of what the court or the local child protective services unit determines to be incidents of physical,
65 emotional or sexual abuse in the home be considered a child in need of services for that reason alone.

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

71 "Child in need of supervision" means:

72 1. A child who, while subject to compulsory school attendance, is habitually and without justification
73 absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of
74 any and all educational services and programs that are required to be provided by law and which meet
75 the child's particular educational needs, (ii) the school system from which the child is absent or other
76 appropriate agency has made a reasonable effort to effect the child's regular attendance without success,
77 and (iii) the school system has provided documentation that it has complied with the provisions of
78 § 22.1-258; or

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

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

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

90 "Delinquent act" means (i) an act designated a crime under the law of the Commonwealth, or an
91 ordinance of any city, county, town, or service district, or under federal law, (ii) a violation of
92 § 18.2-308.7, or (iii) a violation of a court order as provided for in § 16.1-292, but shall not include an
93 act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a crime only if
94 committed by a child. For purposes of §§ 16.1-241 and 16.1-278.9, the term shall include a refusal to
95 take a breath test in violation of § 18.2-268.2 or a similar ordinance of any county, city, or town.

96 "Delinquent child" means a child who has committed a delinquent act or an adult who has committed
97 a delinquent act prior to his 18th birthday, except where the jurisdiction of the juvenile court has been
98 terminated under the provisions of § 16.1-269.6.

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

102 "Domestic abuse" means a pattern of abusive behavior in any relationship that is used by one
103 partner to gain or maintain power and control over another intimate partner. "Domestic abuse" includes
104 physical, sexual, emotional, economic, or psychological actions or threats of such actions.

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

111 "Family or household member" means (i) the person's spouse, whether or not he or she resides in the
112 same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same
113 home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters,
114 half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in
115 the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law,
116 daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v)
117 any individual who has a child in common with the person, whether or not the person and that
118 individual have been married or have resided together at any time, or (vi) any individual who cohabits
119 or who, within the previous 12 months, cohabited with the person, and any children of either of them
120 then residing in the same home with the person.

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

"Independent living arrangement" 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 living services" means services and activities provided to a child in foster care 14 years of age or older and who has been committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. "Independent living services" may also mean services and activities provided to a person who was in foster care on his 18th birthday and has not yet reached the age of 21 years. Such services shall include counseling, education, housing, employment, and money management skills development and access to essential documents and other appropriate services to help children or persons prepare for self-sufficiency.

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

"Jail" or "other facility designed for the detention of adults" means a local or regional correctional facility as defined in § 53.1-1, except those facilities utilized on a temporary basis as a court holding 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 §§ 63.2-900 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.

§ 20-124.3. Best interests of the child; custody or visitation.

In determining best interests of a child for purposes of determining custody or visitation arrangements including any pendente lite orders pursuant to § 20-103, the court shall consider the following:

- 182 1. The age and physical and mental condition of the child, giving due consideration to the child's
183 changing developmental needs;
- 184 2. The age and physical and mental condition of each parent;
- 185 3. The relationship existing between each parent and each child, giving due consideration to the
186 positive involvement with the child's life, the ability to accurately assess and meet the emotional,
187 intellectual and physical needs of the child;
- 188 4. The needs of the child, giving due consideration to other important relationships of the child,
189 including but not limited to siblings, peers and extended family members;
- 190 5. The role that each parent has played and will play in the future, in the upbringing and care of the
191 child;
- 192 6. The propensity of each parent to actively support the child's contact and relationship with the other
193 parent, including whether a parent has unreasonably denied the other parent access to or visitation with
194 the child;
- 195 7. The relative willingness and demonstrated ability of each parent to maintain a close and
196 continuing relationship with the child, and the ability of each parent to cooperate in and resolve disputes
197 regarding matters affecting the child;
- 198 8. The reasonable preference of the child, if the court deems the child to be of reasonable
199 intelligence, understanding, age and experience to express such a preference;
- 200 9. Any history of family abuse *or domestic abuse* as ~~that term~~ *is those terms are* defined in §
201 16.1-228 ~~or~~, *child abuse*, or sexual abuse. If the court finds such a history, the court may disregard the
202 factors in subdivision 6; and
- 203 10. Such other factors as the court deems necessary and proper to the determination.
- 204 The judge shall communicate to the parties the basis of the decision either orally or in writing.
205 Except in cases of consent orders for custody and visitation, this communication shall set forth the
206 judge's findings regarding the relevant factors set forth in this section.