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HOUSE BILL NO. 2008

Offered January 19, 1999

A BILL to amend and reenact § 16.1-228 of the Code of Virginia, relating to definition of child in need of supervision.

Patrons—Cantor, Albo, Armstrong, Darner, Hamilton, Jackson, Jones, J.C. and McDonnell; Senators: Forbes, Hawkins, Houck and Miller, Y.B.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-228 of the Code of Virginia is 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.

"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:

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 any and all educational services and programs that are required to be provided by law and which meet the child's particular educational needs, and (ii) the school system from which the child is absent or

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60 other appropriate agency has made a reasonable effort to effect the child's regular attendance without
61 success; *and (iii) the school system has provided documentation that it has complied with the provisions*
62 *of § 22.1-258; or*

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

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

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

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

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

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

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

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

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

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

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

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

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

121 "Permanent foster care placement" means the place of residence in which a child resides and in

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

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

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

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

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

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

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

141 "Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of
142 § 16.1-269.1 when committed by a juvenile fourteen years of age or older.