

010688872

HOUSE BILL NO. 2553

Offered January 10, 2001

Prefiled January 10, 2001

A BILL to amend and reenact §§ 16.1-228, 16.1-283, 18.2-371.1, 32.1-127, 40.1-103, 63.1-248.2, 63.1-248.6, and 63.1-248.7 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 16.1-241.4, relating to abandonment of children.

Patron—O'Brien

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-228, 16.1-283, 18.2-371.1, 32.1-127, 40.1-103, 63.1-248.2, 63.1-248.6, and 63.1-248.7 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 16.1-241.4 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; however, it shall be an affirmative defense to prosecution for abuse or neglect of a child that the parent voluntarily delivered the child to, and left the child at, a licensed hospital in accordance with § 16.1-241.4;

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.

INTRODUCED

HB2553

59 "Child in need of supervision" means:

60 1. A child who, while subject to compulsory school attendance, is habitually and without justification  
61 absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of  
62 any and all educational services and programs that are required to be provided by law and which meet  
63 the child's particular educational needs, (ii) the school system from which the child is absent or other  
64 appropriate agency has made a reasonable effort to effect the child's regular attendance without success,  
65 and (iii) the school system has provided documentation that it has complied with the provisions of  
66 § 22.1-258; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

146 "Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of  
 147 § 16.1-269.1 when committed by a juvenile fourteen years of age or older.

148 § 16.1-241.4. *Emergency custody of certain abandoned children.*

149 A. *A licensed hospital, as defined in § 32.1-123 shall, without a court order, take temporary physical  
 150 custody of a child who is, or appears to be, not more than seventy-two hours old if:*

151 1. *The child is voluntarily left with the hospital by the child's parent; and*

152 2. *The parent does not express an intent to return for the child.*

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

155 B. *The hospital shall perform any act necessary to protect the physical health or safety of the child.  
 156 Hospital personnel acting in accordance with this section shall be immune from any civil or criminal  
 157 prosecution resulting therefrom unless such person acted in bad faith or with malicious intent. The  
 158 Commonwealth shall reimburse the hospital for the hospital's actual expenses in accepting and caring  
 159 for the child. Except where there is actual or suspected child abuse or neglect or kidnapping, the person  
 160 leaving the infant is not required to disclose his or her identity and may leave at any time and may not  
 161 be pursued or followed. The hospital shall attempt to obtain from the person information concerning the  
 162 infant's background and medical history, which shall be forwarded to the local board of social services.*

163 C. *Immediately after a hospital takes custody of a child, the hospital shall notify the local board of  
 164 social services. The local board of social services shall assume the care, control and custody of the  
 165 child immediately upon receipt of such notice.*

166 D. *Whenever a child is taken into custody without a court order under this section, the local board  
 167 of social services shall, without unnecessary delay, request the court to:*

168 1. *enter a preliminary protective order pursuant to § 16.1-253 finding that the child is a child in  
 169 need of services;*

170 2. *hold an initial hearing not later than the next business day after the child is taken into custody;  
 171 and*

172 3. *appoint a guardian ad litem for the child.*

173 E. *It shall be an affirmative defense to prosecution for abuse or neglect of a child that the parent  
 174 voluntarily delivered the child to, and left the child at, the hospital.*

175 § 16.1-283. *Termination of residual parental rights.*

176 A. *The residual parental rights of a parent or parents may be terminated by the court as hereinafter  
 177 provided in a separate proceeding if the petition specifically requests such relief. No petition seeking  
 178 termination of residual parental rights shall be accepted by the court prior to the filing of a foster care  
 179 plan, pursuant to § 16.1-281, which documents termination of residual parental rights as being in the  
 180 best interests of the child. The court may hear and adjudicate a petition for termination of parental rights  
 181 in the same proceeding in which the court has approved a foster care plan which documents that*

182 termination is in the best interests of the child. The court may terminate the residual parental rights of  
183 one parent without affecting the rights of the other parent. The local board of social services or a  
184 licensed child-placing agency need not have identified an available and eligible family to adopt a child  
185 for whom termination of parental rights is being sought prior to the entry of an order terminating  
186 parental rights.

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

194 The summons shall be served upon the parent or parents and the other parties specified in  
195 § 16.1-263. Written notice of the hearing shall also be provided to the foster parents of the child, a  
196 relative providing care for the child, and any preadoptive parents for the child informing them that they  
197 may appear as witnesses at the hearing to give testimony and otherwise participate in the proceeding.  
198 The persons entitled to notice and an opportunity to be heard need not be made parties to the  
199 proceedings. The summons or notice of hearing shall clearly state the consequences of a termination of  
200 residual parental rights. Service shall be made pursuant to § 16.1-264.

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

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

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

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

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

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

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

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

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

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

244 evidence of this condition; or

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

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

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

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

265 3. Diligent efforts have been made to locate the child's parent or parents without avail. *However,*  
 266 *there is a rebuttable presumption that it is not in the best interests of the child to locate the child's*  
 267 *parent or reunify the child's family if the child was left with a licensed hospital pursuant to*  
 268 *§ 16.1-241.4.*

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

288 F. The local board or licensed child-placing agency to which authority is given to place the child for  
 289 adoption and consent thereto after an order terminating parental rights is entered shall file a written  
 290 Adoption Progress Report with the juvenile court on the progress being made to place the child in an  
 291 adoptive home. The report shall be filed with the court every six months from the date of the final order  
 292 terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit  
 293 court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is  
 294 given to the local board or licensed child-placing agency to place the child for adoption, the juvenile  
 295 court shall schedule a date by which the board or agency shall file the first written Adoption Progress  
 296 Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to  
 297 the guardian ad litem for the child. The court may schedule a hearing on the report with or without the  
 298 request of a party.

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

305 § 18.2-371.1. Abuse and neglect of children; penalty.

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

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

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

319 *D. It shall be an affirmative defense to prosecution for abuse or neglect of a child who is not more  
320 than seventy-two hours old that a parent voluntarily delivered the child to, and left the child at, a  
321 licensed hospital in accordance with § 16.1-241.4.*

322 § 32.1-127. Regulations.

323 A. The regulations promulgated by the Board to carry out the provisions of this article shall be in  
324 substantial conformity to the standards of health, hygiene, sanitation, construction and safety as  
325 established and recognized by medical and health care professionals and by specialists in matters of  
326 public health and safety, including health and safety standards established under provisions of Title  
327 XVIII and Title XIX of the Social Security Act, and to the provisions of Article 2 (§ 32.1-138 et seq.)  
328 of this chapter.

329 B. Such regulations:

330 1. Shall include minimum standards for (i) the construction and maintenance of hospitals, nursing  
331 homes and certified nursing facilities to assure the environmental protection and the life safety of its  
332 patients and employees and the public; (ii) the operation, staffing and equipping of hospitals, nursing  
333 homes and certified nursing facilities; (iii) qualifications and training of staff of hospitals, nursing homes  
334 and certified nursing facilities, except those professionals licensed or certified by the Department of  
335 Health Professions; and (iv) conditions under which a hospital or nursing home may provide medical  
336 and nursing services to patients in their places of residence;

337 2. Shall provide that at least one physician who is licensed to practice medicine in this  
338 Commonwealth shall be on call at all times, though not necessarily physically present on the premises,  
339 at each hospital which operates or holds itself out as operating an emergency service;

340 3. May classify hospitals and nursing homes by type of specialty or service and may provide for  
341 licensing hospitals and nursing homes by bed capacity and by type of specialty or service;

342 4. Shall also require that each hospital establish a protocol for organ donation, in compliance with  
343 federal law and the regulations of the Health Care Financing Administration (HCFA), particularly 42  
344 C.F.R. § 482.45. Each hospital shall have an agreement with an organ procurement organization  
345 designated in HCFA regulations for routine contact, whereby the provider's designated organ  
346 procurement organization certified by HCFA (i) is notified in a timely manner of all deaths or imminent  
347 deaths of patients in the hospital and (ii) is authorized to determine the suitability of the decedent or  
348 patient for organ donation and, in the absence of a similar arrangement with any eye bank or tissue bank  
349 in Virginia certified by the Eye Bank Association of America or the American Association of Tissue  
350 Banks, the suitability for tissue and eye donation. The hospital shall also have an agreement with at least  
351 one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage,  
352 and distribution of tissues and eyes to ensure that all usable tissues and eyes are obtained from potential  
353 donors and to avoid interference with organ procurement. The protocol shall ensure that the hospital  
354 collaborates with the designated organ procurement organization to inform the family of each potential  
355 donor of the option to donate organs, tissues, or eyes or to decline to donate. The individual making  
356 contact with the family shall have completed a course in the methodology for approaching potential  
357 donor families and requesting organ or tissue donation that (i) is offered or approved by the organ  
358 procurement organization and designed in conjunction with the tissue and eye bank community and (ii)  
359 encourages discretion and sensitivity according to the specific circumstances, views, and beliefs of the  
360 relevant family. In addition, the hospital shall work cooperatively with the designated organ procurement  
361 organization in educating the staff responsible for contacting the organ procurement organization's  
362 personnel on donation issues, the proper review of death records to improve identification of potential  
363 donors, and the proper procedures for maintaining potential donors while necessary testing and  
364 placement of potential donated organs, tissues, and eyes takes place. This process shall be followed,  
365 without exception, unless the family of the relevant decedent or patient has expressed opposition to  
366 organ donation, the chief administrative officer of the hospital or his designee knows of such opposition,

367 and no donor card or other relevant document, such as an advance directive, can be found;  
 368 5. Shall require that each hospital that provides obstetrical services establish a protocol for admission  
 369 or transfer of any pregnant woman who presents herself while in labor;

370 6. Shall also require that each licensed hospital develop and implement a protocol requiring written  
 371 discharge plans for identified, substance-abusing, postpartum women and their infants. The protocol shall  
 372 require that the discharge plan be discussed with the patient and that appropriate referrals for the mother  
 373 and the infant be made and documented. Appropriate referrals may include, but need not be limited to,  
 374 treatment services, comprehensive early intervention services for infants and toddlers with disabilities  
 375 and their families pursuant to Part H of the Individuals with Disabilities Education Act, 20 U.S.C.  
 376 § 1471 et seq., and family-oriented prevention services. The discharge planning process shall involve, to  
 377 the extent possible, the father of the infant and any members of the patient's extended family who may  
 378 participate in the follow-up care for the mother and the infant. Immediately upon identification, pursuant  
 379 to § 54.1-2403.1, of any substance-abusing, postpartum woman, the hospital shall notify, subject to  
 380 federal law restrictions, the community services board of the jurisdiction in which the woman resides to  
 381 appoint a discharge plan manager. The community services board shall implement and manage the  
 382 discharge plan;

383 7. Shall require that each nursing home and certified nursing facility fully disclose to the applicant  
 384 for admission the home's or facility's admissions policies, including any preferences given;

385 8. Shall require that each licensed hospital establish a protocol relating to the rights and  
 386 responsibilities of patients which shall include a process reasonably designed to inform patients of such  
 387 rights and responsibilities. Such rights and responsibilities of patients, a copy of which shall be given to  
 388 patients on admission, shall be based on Joint Commission on Accreditation of Healthcare Organizations'  
 389 standards;

390 9. Shall establish standards and maintain a process for designation of levels or categories of care in  
 391 neonatal services according to an applicable national or state-developed evaluation system. Such  
 392 standards may be differentiated for various levels or categories of care and may include, but need not be  
 393 limited to, requirements for staffing credentials, staff/patient ratios, equipment, and medical protocols;  
 394 and

395 10. Shall require that each nursing home and certified nursing facility train all employees who are  
 396 mandated to report adult abuse, neglect, or exploitation pursuant to § 63.1-55.3 on such reporting  
 397 procedures and the consequences for failing to make a required report.

398 *11. Shall require that each licensed hospital develop and implement a protocol for taking temporary*  
 399 *physical custody of abandoned children in accordance with § 16.1-241.4.*

400 C. Upon obtaining the appropriate license, if applicable, licensed hospitals, nursing homes, and  
 401 certified nursing facilities may operate adult day care centers.

402 D. All facilities licensed by the Board pursuant to this article which provide treatment or care for  
 403 hemophiliacs and, in the course of such treatment, stock clotting factors, shall maintain records of all lot  
 404 numbers or other unique identifiers for such clotting factors in order that, in the event the lot is found to  
 405 be contaminated with an infectious agent, those hemophiliacs who have received units of this  
 406 contaminated clotting factor may be apprised of this contamination. Facilities which have identified a lot  
 407 which is known to be contaminated shall notify the recipient's attending physician and request that he  
 408 notify the recipient of the contamination. If the physician is unavailable, the facility shall notify by mail,  
 409 return receipt requested, each recipient who received treatment from a known contaminated lot at the  
 410 individual's last known address.

411 § 40.1-103. Cruelty and injuries to children.

412 A. It shall be unlawful for any person employing or having the custody of any child willfully or  
 413 negligently to cause or permit the life of such child to be endangered or the health of such child to be  
 414 injured, or willfully or negligently to cause or permit such child to be placed in a situation that its life,  
 415 health or morals may be endangered, or to cause or permit such child to be overworked, tortured,  
 416 tormented, mutilated, beaten or cruelly treated. Any person violating this section shall be guilty of a  
 417 Class 6 felony.

418 *B. It shall be an affirmative defense to prosecution for violation of this section for a parent who*  
 419 *voluntarily delivers a child to, and leaves the child at, a licensed hospital in accordance with*  
 420 *§ 16.1-241.4.*

421 § 63.1-248.2. Definitions.

422 As used in this chapter unless the context requires a different meaning:

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

424 1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or  
 425 inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than  
 426 accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental  
 427 functions;

428 2. Whose parents or other person responsible for his care neglects or refuses to provide care  
429 necessary for his health. However, no child who in good faith is under treatment solely by spiritual  
430 means through prayer in accordance with the tenets and practices of a recognized church or religious  
431 denomination shall for that reason alone be considered to be an abused or neglected child;

432 3. Whose parents or other person responsible for his care abandons such child; *however, it shall be*  
433 *an affirmative defense to prosecution for abandonment of a child that the parent voluntarily delivered*  
434 *the child to, and left the child at, a licensed hospital in accordance with § 16.1-241.4;*

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

437 5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or  
438 physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco  
439 parentis.

440 "Complaint" means any information or allegation of abuse or neglect made orally or in writing other  
441 than the reports referred to below.

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

443 "Family assessment" means the collection of information necessary to determine:

444 1. The immediate safety needs of the child;

445 2. The protective and rehabilitative services needs of the child and family that will deter abuse or  
446 neglect;

447 3. Risk of future harm to the child; and

448 4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the  
449 family is unable or unwilling to participate in services.

450 "Investigation" means the collection of information necessary to determine:

451 1. The immediate safety needs of the child;

452 2. The protective and rehabilitative services needs of the child and family that will deter abuse or  
453 neglect;

454 3. Risk of future harm to the child;

455 4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the  
456 family is unable or unwilling to participate in services;

457 5. Whether or not abuse or neglect has occurred;

458 6. If abuse or neglect has occurred, who abused or neglected the child; and

459 7. A finding of either founded or unfounded based on the facts collected during the investigation.

460 "Local department" means the department of public welfare or social services of any county or city  
461 in this Commonwealth.

462 "Prevention" means efforts that (i) promote health and competence in people and (ii) create, promote  
463 and strengthen environments that nurture people in their development.

464 "Report" means an official document on which information is given concerning abuse and neglect  
465 and which is required to be made by persons designated herein and by local departments in those  
466 situations in which a complaint from the general public reveals suspected abuse or neglect.

467 "The court" means the juvenile and domestic relations district court of the county or city.

468 "Valid report or complaint" means the local department of social services has evaluated the  
469 information and allegations of the report or complaint and determined that the local department shall  
470 conduct an investigation or family assessment because the following elements are present:

471 1. The alleged victim child or children are under the age of eighteen at the time of the complaint or  
472 report;

473 2. The alleged abuser is the alleged victim child's parent or other caretaker;

474 3. The local department receiving the complaint or report is a local department of jurisdiction; and

475 4. The circumstances described allege suspected child abuse or neglect.

476 Nothing in this section shall relieve any person specified in § 63.1-248.3 from making reports  
477 required in that section, regardless of the identity of the person suspected to have caused such abuse or  
478 neglect.

479 § 63.1-248.6. Local departments to establish child-protective services; duties.

480 A. Each local department shall establish child-protective services under a departmental coordinator  
481 within such department or with one or more adjacent local departments which shall be staffed with  
482 qualified personnel pursuant to regulations promulgated by the State Board of Social Services. The local  
483 department shall be the public agency responsible for receiving and responding to complaints and  
484 reports, except that (i) in cases where the reports or complaints are to be made to the juvenile and  
485 domestic relations district court and the judge determines that no local department of social services  
486 within a reasonable geographic distance can impartially respond to the report, the court shall assign the  
487 report to the court services unit of his court for evaluation; and (ii) in cases where an employee at a  
488 private or state-operated hospital, institution or other facility, or an employee of a school board is  
489 suspected of abusing or neglecting a child in such hospital, institution or other facility, or public school,



490 the local department shall request the Department and the relevant private or state-operated hospital,  
 491 institution or other facility, or school board to assist in conducting a joint investigation in accordance  
 492 with rules and regulations approved by the State Board, in consultation with the Departments of  
 493 Education, Health, Medical Assistance Services, Mental Health, Mental Retardation and Substance Abuse  
 494 Services, Juvenile Justice and Corrections.

495 B. The local department shall ensure, through its own personnel or through cooperative arrangements  
 496 with other local agencies, that personnel who respond to reports or complaints that an employee of a  
 497 private or state-operated hospital, institution or other facility, or an employee of a school board, abused  
 498 or neglected a child in such hospital, institution or other facility, or public school, are qualified and  
 499 assisted by the Department and the relevant private or state-operated hospital, institution or other facility,  
 500 or school board in accordance with State Board regulations.

501 C. The local department shall ensure, through its own personnel or through cooperative arrangements  
 502 with other local agencies, the capability of receiving reports or complaints and responding to them  
 503 promptly on a twenty-four-hours-a-day, seven-days-per-week basis.

504 D. The local department shall widely publicize a telephone number for receiving complaints and  
 505 reports.

506 E. The local department shall upon receipt of a complaint report immediately to the attorney for the  
 507 Commonwealth and the local law-enforcement agency and make available to them the records of the  
 508 local department when abuse or neglect is suspected in any case involving (i) death of a child; (ii)  
 509 injury or threatened injury to the child in which a felony or Class 1 misdemeanor is also suspected; (iii)  
 510 any sexual abuse, suspected sexual abuse or other sexual offense involving a child, including but not  
 511 limited to the use or display of the child in sexually explicit visual material, as defined in § 18.2-374.1;  
 512 (iv) any abduction of a child; (v) any felony or Class 1 misdemeanor drug offense involving a child; or  
 513 (vi) contributing to the delinquency of a minor in violation of § 18.2-371, and provide the attorneys for  
 514 the Commonwealth and the local law-enforcement agency with records of any complaints of abuse or  
 515 neglect involving the victim or the alleged perpetrator. The local department shall not allow reports of  
 516 the death of the victim from other local agencies to substitute for direct reports to the attorney for the  
 517 Commonwealth and the local law-enforcement agency.

518 F. When abuse or neglect is suspected in any case involving the death of a child, the local  
 519 department shall report the case immediately to the regional medical examiner and the local  
 520 law-enforcement agency.

521 G. The local department shall use reasonable diligence to locate (i) any child for whom a report of  
 522 suspected abuse or neglect has been received and is under investigation, receiving family assessment, or  
 523 for whom a founded determination of abuse and neglect has been made and a child protective services  
 524 case opened and (ii) persons who are the subject of a report that is under investigation or receiving  
 525 family assessment, if the whereabouts of the child or such persons are unknown to the local department.

526 H. When an abused or neglected child and the persons who are the subject of an open child  
 527 protective services case have relocated out of the jurisdiction of the local department, the local  
 528 department shall notify the child protective services agency in the jurisdiction to which such persons  
 529 have relocated, whether inside or outside of the Commonwealth, and forward to such agency relevant  
 530 portions of the case record. The receiving local department shall arrange protective and rehabilitative  
 531 services as required by this section.

532 I. When a child for whom a report of suspected abuse or neglect has been received and is under  
 533 investigation or receiving family assessment and the child and/or the child's parents or other persons  
 534 responsible for the child's care who are the subject of the report that is under investigation or family  
 535 assessment have relocated out of the jurisdiction of the local department, the local department shall  
 536 notify the child protective services agency in the jurisdiction to which the child and/or such persons  
 537 have relocated, whether inside or outside of the Commonwealth, and complete such investigation or  
 538 family assessment by requesting such agency's assistance in completing the investigation or family  
 539 assessment. The local department that completes the investigation or family assessment shall forward to  
 540 the receiving agency relevant portions of the case record in order for the receiving agency to arrange  
 541 protective and rehabilitative services as required by this section.

542 J. Upon receipt of a report of child abuse or neglect, the local department shall determine the validity  
 543 of such report and shall make a determination to conduct an investigation pursuant to § 63.1-248.6:01  
 544 or, if designated as a child protective services differential response agency by the Department according  
 545 to § 63.1-248.2:1, a family assessment pursuant to § 63.1-248.6:02.

546 K. The local department shall foster, when practicable, the creation, maintenance and coordination of  
 547 hospital and community-based multi-disciplinary teams which shall include where possible, but not be  
 548 limited to, members of the medical, mental health, social work, nursing, education, legal and  
 549 law-enforcement professions. Such teams shall assist the local departments in identifying abused and  
 550 neglected children; coordinating medical, social, and legal services for the children and their families;

551 developing innovative programs for detection and prevention of child abuse; promoting community  
552 concern and action in the area of child abuse and neglect; and disseminating information to the general  
553 public with respect to the problem of child abuse and neglect and the facilities and prevention and  
554 treatment methods available to combat child abuse and neglect. These teams may be the family  
555 assessment and planning teams established pursuant to § 2.1-753. Multi-disciplinary teams may develop  
556 agreements regarding the exchange of information among the parties for the purposes of the  
557 investigation and disposition of complaints of child abuse and neglect, delivery of services, and child  
558 protection. Any information exchanged in accordance with the agreement shall not be considered to be a  
559 violation of the provisions of § 63.1-53 or § 63.1-209.

560 The local department shall also coordinate its efforts in the provision of these services for abused and  
561 neglected children with the judge and staff of the court.

562 L. The local department shall develop, where practical, memoranda of understanding for responding  
563 to reports of child abuse and neglect with local law enforcement and the local office of the  
564 Commonwealth's Attorney.

565 M. The local department shall report annually on its activities concerning abused and neglected  
566 children to the court and to the Child-Protective Services Unit in the Department on forms provided by  
567 the Department.

568 N. Statements, or any evidence derived therefrom, made to local department child-protective services  
569 personnel, or to any person performing the duties of such personnel, by any person accused of the  
570 abuse, injury, neglect or death of a child after the arrest of such person, shall not be used in evidence in  
571 the case in chief against such person in the criminal proceeding on the question of guilt or innocence  
572 over the objection of the accused, unless the statement was made after such person was fully advised (i)  
573 of his right to remain silent, (ii) that anything he says may be used against him in a court of law, (iii)  
574 that he has a right to the presence of an attorney during any interviews, and (iv) that if he cannot afford  
575 an attorney, one will be appointed for him prior to any questioning.

576 O. Notwithstanding any other provision of law, the local department, in accordance with Board  
577 regulations, shall transmit information regarding founded complaints or family assessments and may  
578 transmit other information regarding reports, complaints, family assessments and investigations involving  
579 active duty military personnel or members of their household to family advocacy representatives of the  
580 United States Armed Forces.

581 *P. Immediately after receiving notice from the licensed hospital pursuant to § 16.1-241.4, the local*  
582 *department of social services shall, without unnecessary delay, request the court to enter a preliminary*  
583 *protective order pursuant to § 16.1-253. The local department of social services is not required to*  
584 *initiate a child protective services investigation when an infant comes into its custody pursuant to*  
585 *§16.1-241.4, unless there is actual or suspected child abuse or neglect. Immediately after receiving*  
586 *notice from the licensed hospital, the local department shall contact the local law-enforcement agency*  
587 *for assistance in assuring that the infant left at the licensed hospital is not a missing infant. The*  
588 *law-enforcement agency shall immediately submit an inquiry to the Missing Children Information*  
589 *Clearinghouse. Each local department of social services shall maintain and update on a monthly basis a*  
590 *report of the number of children who have been abandoned pursuant to §16.1-241.4 and forward the*  
591 *information to the Department.*

592 § 63.1-248.7. Establishment of Child-Protective Services Unit; duties.

593 There is created a Child-Protective Services Unit in the Department of Social Services which shall  
594 have the following powers and duties:

595 1. To evaluate and strengthen all local, regional and state programs dealing with child abuse and  
596 neglect.

597 2. To assume primary responsibility for directing the planning and funding of child-protective  
598 services. This shall include reviewing and approving the annual proposed plans and budgets for  
599 protective services submitted by the local departments.

600 3. To assist in developing programs aimed at discovering and preventing the many factors causing  
601 child abuse and neglect.

602 4. To prepare and disseminate, including the presentation of, educational programs and materials on  
603 child abuse and neglect.

604 5. To provide educational programs for professionals required by law to make reports under this  
605 chapter.

606 6. To establish standards of training and provide educational programs to qualify workers in the field  
607 of child-protective services.

608 7. To establish standards of training and educational programs to qualify workers to determine  
609 whether complaints of abuse or neglect of a child in a private or state-operated hospital, institution or  
610 other facility, or public school, are founded.

611 8. To maintain staff qualified pursuant to State Board regulations to assist local department personnel  
612 in determining whether an employee of a private or state-operated hospital, institution or other facility or

613 an employee of a school board, abused or neglected a child in such hospital, institution, or other facility,  
614 or public school.

615 9. To monitor the processing and determination of cases where an employee of a private or  
616 state-operated hospital, institution or other facility, or an employee of a school board, is suspected of  
617 abusing or neglecting a child in such hospital, institution, or other facility, or public school.

618 10. To help coordinate child-protective services at the state, regional, and local levels with the efforts  
619 of other state and voluntary social, medical and legal agencies.

620 11. To maintain a Child Abuse and Neglect Information System that includes all cases of child abuse  
621 and neglect within the Commonwealth.

622 12. To provide for methods to preserve the confidentiality of all records in order to protect the rights  
623 of the child, his parents or guardians.

624 13. *To produce, in conjunction with the Department of Health, a media campaign to promote safe*  
625 *placement alternatives for newborn infants and to inform the public concerning emergency custody*  
626 *provisions for certain abandoned children pursuant to § 16.1-241.4.*

627 **2. That the Department of Social Services shall submit an annual report to the General Assembly,**  
628 **beginning December 1, 2001, that compiles the number of children abandoned annually pursuant**  
629 **to this act.**

INTRODUCED

HB2553