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SENATE BILL NO. 168

Offered January 9, 2002

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A *BILL to amend and reenact §§ 16.1-228, 16.1-260, 16.1-263, 16.1-281, 16.1-283, 18.2-371.1, 63.1-248.2, 63.1-248.6 and 63.1-248.9 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 16.1-241.4 and 63.1-56.4, relating to affirmative defense to prosecution for abuse and neglect; infant receiving facilities; emergency custody of abandoned children.*

Patrons—Byrne and Ticer

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-228, 16.1-260, 16.1-263, 16.1-281, 16.1-283, 18.2-371.1, 63.1-248.2, 63.1-248.6 and 63.1-248.9 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 16.1-241.4 and 63.1-56.4, 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, no child who is delivered to an infant-receiving facility in accordance with the provisions of § 16.1-241.4 shall for that reason alone be considered to be an abandoned 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, *including a child who is found to have been delivered to an infant-receiving facility in accordance with the provisions of § 16.1-241.4;* 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

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59 of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court
60 is essential to provide the treatment, rehabilitation or services needed by the child or his family.

61 "Child in need of supervision" means:

62 1. A child who, while subject to compulsory school attendance, is habitually and without justification
63 absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of
64 any and all educational services and programs that are required to be provided by law and which meet
65 the child's particular educational needs, (ii) the school system from which the child is absent or other
66 appropriate agency has made a reasonable effort to effect the child's regular attendance without success,
67 and (iii) the school system has provided documentation that it has complied with the provisions of
68 § 22.1-258; or

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

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

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

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

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

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

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

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

113 "General hospital" means any acute care hospital offering twenty-four hour emergency services.

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

116 "Infant-receiving facility" means a facility that, in accordance with the provisions of § 16.1-241.4,
117 takes custody of certain infants who are delivered to it when the child is not more than seventy-two
118 hours old and includes all general hospitals, the Medical College of Virginia Hospitals, and the
119 University of Virginia Hospitals. Additionally, the following facilities may opt to become infant-receiving
120 facilities by complying with the procedures developed by the State Board of Social Services in

consultation with the State Board of Health: local departments of health, local departments of social services, physicians' offices and rescue squads and fire departments that include emergency medical technicians. Any of these facilities shall only meet this definition during their hours of operation.

"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 §§ 63.1-56 and 63.1-206.1 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 § 63.1-248.9. 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.

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

"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.

"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 fourteen years of age or older.

§ 16.1-241.4. Infant-receiving facilities; establishment and operation; emergency custody; termination of parental rights.

A. Each general hospital, the Medical College of Virginia Hospitals and the University of Virginia Hospitals shall establish an infant-receiving facility pursuant to guidelines established by the State Board of Social Services, in consultation with the State Board of Health. Additionally, the following facilities may become infant-receiving facilities by complying with the appropriate guidelines: local departments of health, local departments of social services, physicians' offices and rescue squads and fire departments that employ emergency medical technicians. A facility shall be considered an infant-receiving facility only during its hours of operation.

B. An infant-receiving facility shall, without a court order, take temporary physical custody of a child who is, or appears to be, not more than seventy-two hours old if:

1. The child is voluntarily delivered to the facility; and

2. No intent to return for the child is expressed.

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

It shall be an affirmative defense to a charge of abuse or neglect, whether civil or criminal, that the child was delivered, in accordance with this section, to an infant-receiving facility, if such abuse or neglect charge is based solely upon delivery of the child to the infant-receiving facility.

C. The facility shall perform any act reasonably necessary to protect the physical health and safety of the child. The Commonwealth shall reimburse the facility for the facility's actual expenses in accepting and caring for such child. Facility personnel acting in accordance with this section shall be immune from civil liability or criminal prosecution unless the actions of such personnel constitute gross negligence or willful misconduct.

182 D. The person delivering the infant is not required to disclose his identity and unless facility
183 personnel know of or suspect child abuse or neglect or kidnapping, he may leave at any time without
184 being pursued, followed or questioned. The facility personnel shall attempt to obtain from the person
185 information concerning the child's background and medical history, which shall be forwarded to the
186 local board of social services. Additionally, facility personnel shall attempt to provide to the person in
187 writing and to verbally explain the following:

188 1. A Personal Identification Number (PIN), which is a number unique to that person. The PIN shall
189 be the only means of identification of the person.

190 2. The toll-free telephone number for the central information center of the Department of Social
191 Services, where the person may call and be identified by his PIN and that the person may call the
192 toll-free telephone number for the central information center and use the PIN to express an intent to
193 regain custody of the child and to provide the parent's name and address.

194 3. The person may call the toll-free telephone number and, using the PIN, leave any information
195 about the child, including information regarding the health, medical or family history.

196 4. That there is a presumption that the parent who delivers the child to an infant-receiving facility
197 intended to leave the child and consented to termination of parental rights.

198 Immediately after a facility takes custody of a child, the facility shall notify the local board of social
199 services. The local board of social services shall assume the care, control and custody of the child as
200 soon as practicable upon receipt of such notice, in accordance with the provisions of § 63.1-248.9.
201 However, no hospital serving as an infant-receiving facility shall discharge the child until the child is
202 medically stable for discharge, unless the child is transferred to a more medically appropriate care
203 setting. When called upon to respond to a child delivered to an infant-receiving facility, the local board
204 of social services shall immediately report this information to the Department of Social Services' central
205 information center and to the local law-enforcement agency for assistance in assuring that the child is
206 not a missing child. The law-enforcement agency shall immediately submit an inquiry to the Missing
207 Children Information Clearinghouse.

208 F. Upon receipt of notice by the court that the local board has assumed the care, control and
209 custody of the child, the court shall appoint a guardian ad litem for the child, who shall represent the
210 child in accordance with the provisions of § 16.1-266.

211 G. A child may be taken into immediate custody and placed in foster care pursuant to an emergency
212 custody order in cases in which the child is alleged to be in need of services because the child was
213 delivered to an infant-receiving facility. Such order may be issued ex parte by the court upon a petition,
214 supported by an affidavit or by sworn testimony in person before the judge or intake officer, that
215 establishes that:

216 1. The child was delivered to an infant-receiving facility when the child was not older than, or did
217 not appear to be older than, seventy-two hours;

218 2. The delivery of the child appeared to be voluntary and no intent to return for the child was
219 expressed; and

220 3. Placement in the temporary custody of the board is in the best interest of the child.

221 H. Whenever a child is taken into immediate custody pursuant to an emergency custody order, an
222 adjudicatory hearing shall be held within forty-five days of the filing of the petition, except where an
223 order of publication has been ordered by the court, in which case the hearing shall be held within
224 seventy-five days of the filing of the petition. The board that is granted temporary custody shall file a
225 foster care plan in accordance with the provisions of § 16.1-281 to be heard at the hearing. The court
226 shall provide notice of the hearing and a copy of the petition and foster care plan to the following, each
227 of whom shall be a party entitled to participate in the proceeding:

228 1. The local board of social services;

229 2. The guardian ad litem for the child;

230 3. The parent who delivered the child to an infant-receiving facility, if his name and address are
231 known;

232 4. The remaining parent, if the parent's identity is reasonably ascertainable; and

233 5. Such other persons as appear to the court to be proper or necessary parties to the proceedings.

234 I. At the conclusion of the adjudicatory hearing, the court shall determine whether the allegations in
235 the petition have been proven by a preponderance of the evidence. If the court finds that the child is in
236 need of services because the child was delivered to an infant-receiving facility, the court may enter any
237 order of disposition authorized by § 16.1-278.4. The child may not be returned to or placed in the
238 custody of his biological parent or the relatives of the biological parent until a scientifically reliable
239 genetic test affirms at least a ninety-eight percent probability of parentage. An order transferring to or
240 continuing legal custody with a local board of social services shall be entered only upon a finding that
241 such placement is in the best interest of the child, and the order shall so state. At the hearing held
242 pursuant to this subsection, the court, in addition to hearing evidence on the petition, shall review the
243 foster care plan for the child filed by the local board of social services in accordance with § 16.1-281.

J. If the parent who delivered the child to an infant-receiving facility has not come forward to claim a relationship with the child, at the dispositional hearing the court may, in addition to the dispositional alternatives authorized by § 16.1-278.4, enter an order terminating the parental rights of the relinquishing parent, if the court finds, based upon clear and convincing evidence, that termination of the relinquishing parent's parental rights is in the best interest of the child and (i) the relinquishing parent has been served in person with a summons and notice of the termination proceeding or (ii) the whereabouts or identity of the parent are not reasonably ascertainable and the parent has been given notice of the termination proceeding through an order of publication pursuant to §§ 8.01-316 and 8.01-317, and such parent fails to object to the proceedings. Such order of publication shall include, but not be limited to, the gender of the child, the date the child was delivered to an infant-receiving facility and the name and location of that facility.

If the remaining parent has not come forward to claim a relationship with the child, at the dispositional hearing, the court may, in addition to the dispositional alternatives authorized by § 16.1-278.4, enter an order terminating parental rights of this parent, if the court finds, based upon clear and convincing evidence, that termination of the remaining parent's parental rights is in the best interests of the child and (a) the remaining parent has been served in person with a summons and notice of the termination proceeding or (b) the whereabouts or identity of the remaining parent is not reasonably ascertainable and the parent has been given notice of the termination proceedings through an order of publication pursuant to §§ 8.01-316 and 8.01-317, and such parent fails to object to the proceedings. Such order of publication shall include, but not be limited to, the gender of the child, the date the child was delivered to an infant-receiving facility and the name and location of that facility.

K. Any order terminating parental rights shall be accompanied by an order continuing or granting custody to a local board of social services. Such an order shall indicate whether the board shall have the authority to place the child for adoption and consent thereto.

L. The board to which authority is given to place the child for adoption and consent thereto, after an order terminating parental rights is entered pursuant to this section, shall file a written Adoption Progress Report with the juvenile court on the progress being made to place the child in an adoptive home. The report shall be filed with the court every six months from the date of the final order terminating parental rights until a final order of adoption is entered on behalf of the child in circuit court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is given to the board to place the child for adoption, the juvenile court shall schedule a date by which the board shall file the Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report with or without the consent of a party.

§ 16.1-260. Intake; petition; investigation.

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection H of this section and in § 16.1-259. The form and content of the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support for a child. Complaints, requests and the processing of petitions to initiate a case shall be the responsibility of the intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own motion with the clerk, (ii) the Department of Social Services may file support petitions on its own motion with the clerk, and (iii) any attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject of the petition is a child alleged to be in need of services, in need of supervision or delinquent. Complaints alleging abuse or neglect of a child shall be referred initially to the local department of public welfare or social services in accordance with the provisions of Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1. Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is receiving child support services or public assistance. No individual who is receiving support services or public assistance shall be denied the right to file a petition or motion to establish, modify or enforce an order for support of a child. If the petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance of process, shall forward a copy of the petition or motion, together with notice of the court date, to the Division of Child Support Enforcement.

B. The appearance of a child before an intake officer may be by (i) personal appearance before the intake officer or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, an intake officer may exercise all powers conferred by law. All communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as

original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

When the court service unit of any court receives a complaint alleging facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241, the unit, through an intake officer, may proceed informally to make such adjustment as is practicable without the filing of a petition or may authorize a petition to be filed by any complainant having sufficient knowledge of the matter to establish probable cause for the issuance of the petition.

An intake officer may proceed informally on a complaint alleging a child is in need of services, in need of supervision or delinquent only if the juvenile (ia) is not alleged to have committed a violent juvenile felony; (ib) has not previously been proceeded against informally or adjudicated in need of supervision or delinquent; ~~or (ic)~~ is not the subject of a complaint filed pursuant to § 22.1-258 and the attendance officer has provided documentation to the intake officer or magistrate that the relevant school division has complied with the provisions of § 22.1-258; *or (d) is not alleged to be a child who has been delivered to an infant-receiving facility in accordance with the provisions of § 16.1-241.4.* A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is in need of supervision or delinquent shall be filed with the court if the juvenile had previously been proceeded against informally by intake or had been adjudicated in need of supervision or delinquent.

Whenever informal action is taken as provided in this subsection on a complaint alleging that a child in need of services, in need of supervision or delinquent, the intake officer shall (i) develop a plan for the juvenile, which may include restitution and the performance of community service, based upon community resources and the circumstances which resulted in the complaint, (ii) create an official record of the action taken by the intake officer and file such record in the juvenile's case file, and (iii) advise the juvenile and the juvenile's parent, guardian or other person standing in loco parentis and the complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241 will result in the filing of a petition with the court.

C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody, visitation or support of a child is the subject of controversy or requires determination, (ii) a person has deserted, abandoned or failed to provide support for any person in violation of law, (iii) a child or such child's parent, guardian, legal custodian or other person standing in loco parentis is entitled to treatment, rehabilitation or other services which are required by law, or (iv) family abuse has occurred and a protective order is being sought pursuant to §§ 16.1-253.1, 16.1-253.4 or § 16.1-279.1. If any such complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to be abused, neglected, in need of services, in need of supervision or delinquent, if the intake officer believes that probable cause does not exist, or that the authorization of a petition will not be in the best interest of the family or juvenile or that the matter may be effectively dealt with by some agency other than the court, he may refuse to authorize the filing of a petition.

D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be in need of supervision have utilized or attempted to utilize treatment and services available in the community and have exhausted all appropriate nonjudicial remedies which are available to them. When the intake officer determines that the parties have not attempted to utilize available treatment or services or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility or individual to receive treatment or services, and a petition shall not be filed. Only after the intake officer determines that the parties have made a reasonable effort to utilize available community treatment or services may he permit the petition to be filed.

E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the juvenile may be detained pursuant to the warrant issued in accordance with this subsection. If the intake officer refuses to authorize a petition relating to a child in need of services or in need of supervision, a status offense, or a misdemeanor other than Class 1, his decision is final.

Upon delivery to the juvenile court of a warrant issued pursuant to subdivision 2 of § 16.1-256, the intake officer shall accept and file a petition founded upon the warrant.

F. The intake officer shall notify the attorney for the Commonwealth of the filing of any petition which alleges facts of an offense which would be a felony if committed by an adult.

G. After a petition is filed alleging that a juvenile committed an act which would be a crime if committed by an adult, the intake officer shall, as soon as practicable, provide notice by telephone of the filing of the petition and the nature of the offense to the superintendent of the school division in which the petitioner alleges the juvenile is or should be enrolled, provided the violation involves:

1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299 et seq.), or 7 (§ 18.2-308 et seq.) of Chapter 7 of Title 18.2;
2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;
3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;
4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;
5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;
6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;
7. Arson and related crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2;
8. Burglary and related offenses, pursuant to §§ 18.2-89 through 18.2-93; or
9. Robbery pursuant to § 18.2-58.

Promptly after filing a petition the intake officer shall also mail notice, by first-class mail, to the superintendent. The failure to provide information regarding the school in which the juvenile who is the subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

The information provided to a division superintendent pursuant to this section may be disclosed only as provided in § 16.1-305.2.

H. The filing of a petition shall not be necessary:

1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and other pedestrian offenses, game and fish laws or a violation of the ordinance of any city regulating surfing or any ordinance establishing curfew violations or animal control violations. In such cases the court may proceed on a summons issued by the officer investigating the violation in the same manner as provided by law for adults. Additionally, an officer investigating a motor vehicle accident may, at the scene of the accident or at any other location where a juvenile who is involved in such an accident may be located, proceed on a summons in lieu of filing a petition.

2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subdivision H of § 16.1-241.

3. In the case of a violation of § 18.2-266 or § 29.1-738, or the commission of any other alcohol-related offense, provided the juvenile is released to the custody of a parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of a parent or legal guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or legal guardian to appear before the court with the juvenile. Disposition of the charge shall be in the manner provided in § 16.1-278.8 or § 16.1-278.9. If the juvenile so charged with a violation of § 18.2-266 or § 29.1-738 refuses to provide a sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or § 29.1-738.2, the provisions of these sections shall be followed except that the magistrate shall authorize execution of the warrant as a summons. The summons shall be served on a parent or legal guardian and the juvenile, and a copy of the summons shall be forwarded to the court in which the violation of § 18.2-266 or § 29.1-738 is to be tried.

4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as provided by law for adults provided that notice of the summons to appear is mailed by the investigating officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

I. Failure to comply with the procedures set forth in this section shall not divest the juvenile court of the jurisdiction granted it in § 16.1-241.

§ 16.1-263. Summonses.

A. After a petition has been filed, the court shall direct the issuance of summonses, one directed to the juvenile, if the juvenile is twelve or more years of age, and another to at least one parent, guardian, legal custodian or other person standing in loco parentis, and such other persons as appear to the court to be proper or necessary parties to the proceedings. *However, in the case of a petition filed pursuant to § 16.1-241.4, the court shall direct the issuance of a summons to the petitioner and such other persons as appear to the court to be proper or necessary parties to the proceedings.* The summons shall require them to appear personally before the court at the time fixed to answer or testify as to the allegations of the petition. Where the custodian is summoned and such person is not a parent of the juvenile in question, a parent shall also be served with a summons. The court may direct that other proper or

necessary parties to the proceedings be notified of the pendency of the case, the charge and the time and place for the hearing.

B. The summons shall advise the parties of their right to counsel as provided in § 16.1-266. A copy of the petition shall accompany each summons for the initial proceedings. The summons shall include notice that in the event that the juvenile is committed to the Department or to a secure local facility, at least one parent or other person legally obligated to care for and support the juvenile may be required to pay a reasonable sum for support and treatment of the juvenile pursuant to § 16.1-290. Notice of subsequent proceedings shall be provided to all parties in interest. In all cases where a party is represented by counsel and counsel has been provided with a copy of the petition and due notice as to time, date and place of the hearing, such action shall be deemed due notice to such party, unless such counsel has notified the court that he no longer represents such party.

C. The judge may endorse upon the summons an order directing a parent or parents, guardian or other custodian having the custody or control of the juvenile to bring the juvenile to the hearing.

D. A party, other than the juvenile, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

E. No such summons or notification shall be required if the judge shall certify on the record that (i) the identity of a parent or guardian is not reasonably ascertainable or (ii) in cases in which it is alleged that a juvenile has committed a delinquent act, crime, status offense or traffic infraction or is in need of services or supervision, the location, or in the case of a parent or guardian located outside of the Commonwealth the location or mailing address, of a parent or guardian is not reasonably ascertainable. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. In cases referred to in clause (ii), an affidavit of a law-enforcement officer or juvenile probation officer that the location of a parent or guardian is not reasonably ascertainable, *and an affidavit of the petitioner in the case of a petition filed pursuant to § 16.1-241.4*, shall be sufficient evidence of this fact, provided that there is no other evidence before the court which would refute the affidavit.

§ 16.1-281. Foster care plan.

A. In any case in which (i) a local board of social services or a public agency designated by the community policy and management team places a child through an agreement with the parents or guardians where legal custody remains with the parents or guardian, or (ii) legal custody of a child is given to a local board of public welfare or social services or a child welfare agency, the department of public welfare or social services, the public agency designated or child welfare agency or the family assessment and planning team established pursuant to § 2.2-5207 shall prepare a foster care plan for such child, as described hereinafter. The individual family service plan developed by the family assessment and planning team pursuant to § 2.2-5208 may be accepted by the court as the foster care plan if it meets the requirements of this section. The representatives of such department, agency, or team shall consult with the child's parents, except when parental rights have been terminated, and any other person or persons standing in loco parentis at the time the board or child welfare agency obtained custody or the board or the public agency placed the child, concerning the matters which should be included in such plan. The department, public agency, child welfare agency or team shall file the plan with the juvenile and domestic relations district court within sixty days following the transfer of custody or the board's or public agency's placement of the child unless the court, for good cause shown, allows an extension of time, which shall not exceed an additional sixty days. However, a foster care plan shall be filed in accordance with the provisions of § 16.1-277.01 with a petition for approval of an entrustment agreement *and in accordance with § 16.1-241.4 in the case of a child who has been delivered to an infant-receiving facility*. A foster care plan need not be prepared if the child is returned to his prior family or placed in an adoptive home within sixty days following transfer of custody to the board or agency or the board's or public agency's placement of the child.

B. The foster care plan shall describe (i) the programs, care, services and other support which will be offered to the child and his parents and other prior custodians; (ii) the participation and conduct which will be sought from the child's parents and other prior custodians; (iii) the visitation and other contacts which will be permitted between the child and his parents and other prior custodians; (iv) the nature of the placement or placements which will be provided for the child; and (v) in writing and where appropriate for children age sixteen or over, the programs and services which will help the child prepare for the transition from foster care to independent living. If consistent with the child's health and safety, the plan shall be designed to support reasonable efforts which lead to the return of the child to his parents or other prior custodians within the shortest practicable time which shall be specified in the plan. The child's health and safety shall be the paramount concern of the court and the agency throughout the placement, case planning, service provision and review process.

If the department, child welfare agency or team determines that it is not reasonably likely that the child can be returned to his prior family within a practicable time, consistent with the best interests of

the child, in a separate section of the plan the department, child welfare agency or team shall (ia) include a full description of the reasons for this conclusion; (iib) determine the opportunities for placing the child with a relative or in an adoptive home; (iic) design the plan to lead to the child's successful placement with a relative if a subsequent transfer of custody to the relative is planned, or in an adoptive home within the shortest practicable time, and if neither of such placements is feasible; (ivd) explain why independent living for a child sixteen years of age or older, permanent foster care or continued foster care is the plan for the child. "Independent living" includes the services and programs needed to assist the child in making a transition from foster care to self-sufficiency. The department or agency may include with such proposed plan a proper pleading seeking the termination of residual parental rights pursuant to § 16.1-283.

The local board or other child welfare agency having custody of the child shall not be required by the court to make reasonable efforts to reunite the child with a parent if the court finds that (i1) *the child was delivered to an infant-receiving facility and neither parent has expressed to the local board, the central information center of the Virginia Department of Social Services or the court a desire to regain custody of the child*; (2) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii3) the parent has been convicted of an offense under the laws of this Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction which constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred or the other parent of the child; or (iii4) the parent has been convicted of an offense under the laws of this Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction which constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense. As used in this section "serious bodily injury" means bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty. Within thirty days of making a determination that reasonable efforts to reunite the child with the parents are not required, the court shall hold a permanency planning hearing pursuant to § 16.1-282.1.

C. A copy of the entire foster care plan shall be sent by the court to the child, if he is twelve years of age or older; the guardian ad litem for the child, the attorney for the child's parents or for any other person standing in loco parentis at the time the board or child welfare agency obtained custody or the board or public agency placed the child, to the parents or other person standing in loco parentis, and such other persons as appear to the court to have a proper interest in the plan. However, a copy of the plan shall not be sent to a parent whose parental rights regarding the child have been terminated. *Notice of the hearing and a copy of the plan shall be provided in accordance with § 16.1-241.4 in the case of a child who has been delivered to an infant-receiving facility.* A copy of the plan, excluding the section of the plan describing the reasons why the child cannot be returned home and the alternative chosen, shall be sent by the court to the foster parents. A hearing shall be held for the purpose of reviewing and approving the foster care plan. The hearing shall be held within seventy-five days of (i) the child's initial foster care placement, if the child was placed through an agreement between the parents or guardians and the local department of social services, other public agency or a child welfare agency; (ii) the original preliminary removal order hearing, if the child was placed in foster care pursuant to § 16.1-252; (iii) the hearing on the petition for relief of custody, if the child was placed in foster care pursuant to § 16.1-277.02; or (iv) the dispositional hearing at which the child was placed in foster care and an order was entered pursuant to §§ 16.1-278.2, 16.1-278.3, 16.1-278.4, 16.1-278.5, 16.1-278.6 or § 16.1-278.8. However, the hearing shall be held in accordance with the provisions of § 16.1-277.01 with a petition for approval of an entrustment agreement, *or in accordance with § 16.1-241.4 in the case of a child who has been delivered to an infant-receiving facility.* If the judge makes any revision in any part of the foster care plan, a copy of the changes shall be sent by the court to all persons who received a copy of the original of that part of the plan.

C1. Any order transferring custody of the child to a relative other than the child's prior family shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative should further provide for, as appropriate, any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

D. The court in which the foster care plan is filed shall be notified immediately if the child is returned to his parents or other persons standing in loco parentis at the time the board or agency obtained custody or the board or public agency placed the child.

E. Nothing in this section shall limit the authority of the juvenile judge or the staff of the juvenile court, upon order of the judge, to review the status of children in the custody of local boards of public welfare or social services or placed by local boards of social services or the public agency designated by the community policy and management team on its own motion. The court shall appoint an attorney to act as guardian ad litem to represent the child any time a hearing is held to review the foster care plan filed for the child or to review the child's status in foster care.

F. At the conclusion of the hearing at which the foster care plan is reviewed, the court shall schedule a foster care review hearing to be held within six months in accordance with § 16.1-282. Parties who are present at the hearing pursuant to this section shall be given notice of the date set for the foster care review hearing and parties who are not present shall be summoned as provided in § 16.1-263.

§ 16.1-283. Termination of residual parental rights.

A. The residual parental rights of a parent or parents may be terminated by the court as hereinafter provided in a separate proceeding if the petition specifically requests such relief. No petition seeking termination of residual parental rights shall be accepted by the court prior to the filing of a foster care plan, pursuant to § 16.1-281, which documents termination of residual parental rights as being in the best interests of the child. The court may hear and adjudicate a petition for termination of parental rights in the same proceeding in which the court has approved a foster care plan which documents that termination is in the best interests of the child. The court may terminate the residual parental rights of one parent without affecting the rights of the other parent. The local board of social services or a licensed child-placing agency need not have identified an available and eligible family to adopt a child for whom termination of parental rights is being sought prior to the entry of an order terminating parental rights.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Diligent efforts have been made to locate the child's parent or parents without avail.

D1. The residual parental rights and responsibilities of a parent or parents of a child in the custody of the local board of social services pursuant to § 16.1-241.4 may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interest of the child and that:

The child was delivered to an infant-receiving facility when the child was not older than or did not appear to be older than seventy-two hours old and legal custody of the child was transferred to the local board of social services.

The child's parent or parents, guardian or relatives have not come forward to identify such child and claim a relationship to the child following the issuance of proper notice to the parent of the termination proceedings.

E. The residual parental rights of a parent or parents of a child who is in the custody of a local board or licensed child-placing agency may be terminated by the court if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of this Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction which constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred or the other parent of the child; or (iii) the parent has been convicted of an offense under the laws of this Commonwealth or a substantially similar law of any other

674 state, the United States or any foreign jurisdiction which constitutes felony assault resulting in serious
675 bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the
676 victim of the offense was a child of the parent or a child with whom the parent resided at the time of
677 such offense. As used in this section, "serious bodily injury" means bodily injury which involves
678 substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss
679 or impairment of the function of a bodily member, organ or mental faculty. The local board or other
680 child welfare agency having custody of the child shall not be required by the court to make reasonable
681 efforts to reunite the child with a parent who has been convicted of one of the felonies specified in this
682 subsection.

683 F. The local board or licensed child-placing agency to which authority is given to place the child for
684 adoption and consent thereto after an order terminating parental rights is entered shall file a written
685 Adoption Progress Report with the juvenile court on the progress being made to place the child in an
686 adoptive home. The report shall be filed with the court every six months from the date of the final order
687 terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit
688 court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is
689 given to the local board or licensed child-placing agency to place the child for adoption, the juvenile
690 court shall schedule a date by which the board or agency shall file the first written Adoption Progress
691 Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to
692 the guardian ad litem for the child. The court may schedule a hearing on the report with or without the
693 request of a party.

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

700 § 18.2-371.1. Abuse and neglect of children; penalty.

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

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

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

714 D. *It shall be an affirmative defense to prosecution for abuse or neglect that a parent delivered the*
715 *child to an infant-receiving facility in accordance with the provisions of § 16.1-241.4, if such*
716 *prosecution is based solely on the accused parent having left the child at an infant-receiving facility.*

717 § 63.1-56.4. *Infant-receiving facilities; establishment of central information center.*

718 *The State Board of Social Services, in consultation with the State Board of Health, shall develop and*
719 *disseminate guidelines for establishing and maintaining an infant-receiving facility as defined in*
720 *§ 16.1-228. The Department shall develop and implement training programs for infant-receiving*
721 *facilities, conduct a public information campaign concerning the emergency custody provisions in*
722 *§ 16.1-241.4, and provide infant-receiving facilities with a window sticker or decal to be displayed in a*
723 *manner that is visible to the public, identifying the facility as an infant-receiving facility.*

724 *The Department shall develop and maintain a central information center with a toll-free telephone*
725 *number. The Department shall provide a unique list of personal identification numbers (PIN) and*
726 *information regarding the use of a PIN to each infant-receiving facility. Upon receipt of information*
727 *regarding the child, the central information center shall immediately forward such information to the*
728 *appropriate local board. Any such information received by the local board from the central information*
729 *center shall be provided by the board to the child's guardian ad litem and to prospective adoptive*
730 *parents of the child.*

731 D. *Beginning December 1, 2002, and annually thereafter, the Department shall report to the General*
732 *Assembly the number of children delivered to infant-receiving facilities and the disposition of such*
733 *children.*

734 § 63.1-248.2. Definitions.

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

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

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

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

3. Whose parents or other person responsible for his care abandons such child; *however, no child who is delivered to an infant-receiving facility in accordance with the provisions of § 16.1-241.4 shall for that reason alone be considered to be an abandoned child;*

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

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

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

"Department" means the State Department of Social Services.

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

1. The immediate safety needs of the child;

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

3. Risk of future harm to the child; and

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

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

1. The immediate safety needs of the child;

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

3. Risk of future harm to the child;

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

5. Whether or not abuse or neglect has occurred;

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Each local department shall establish child-protective services under a departmental coordinator within such department or with one or more adjacent local departments which shall be staffed with qualified personnel pursuant to regulations promulgated by the State Board of Social Services. The local department shall be the public agency responsible for receiving and responding to complaints and

797 reports, except that (i) in cases where the reports or complaints are to be made to the juvenile and
798 domestic relations district court and the judge determines that no local department of social services
799 within a reasonable geographic distance can impartially respond to the report, the court shall assign the
800 report to the court services unit of his court for evaluation; and (ii) in cases where an employee at a
801 private or state-operated hospital, institution or other facility, or an employee of a school board is
802 suspected of abusing or neglecting a child in such hospital, institution or other facility, or public school,
803 the local department shall request the Department and the relevant private or state-operated hospital,
804 institution or other facility, or school board to assist in conducting a joint investigation in accordance
805 with rules and regulations approved by the State Board, in consultation with the Departments of
806 Education, Health, Medical Assistance Services, Mental Health, Mental Retardation and Substance Abuse
807 Services, Juvenile Justice and Corrections.

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

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

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

819 E. The local department shall upon receipt of a complaint report immediately to the attorney for the
820 Commonwealth and the local law-enforcement agency and make available to them the records of the
821 local department when abuse or neglect is suspected in any case involving (i) death of a child; (ii)
822 injury or threatened injury to the child in which a felony or Class 1 misdemeanor is also suspected; (iii)
823 any sexual abuse, suspected sexual abuse or other sexual offense involving a child, including but not
824 limited to the use or display of the child in sexually explicit visual material, as defined in § 18.2-374.1;
825 (iv) any abduction of a child; (v) any felony or Class 1 misdemeanor drug offense involving a child; or
826 (vi) contributing to the delinquency of a minor in violation of § 18.2-371, and provide the attorneys for
827 the Commonwealth and the local law-enforcement agency with records of any complaints of abuse or
828 neglect involving the victim or the alleged perpetrator. The local department shall not allow reports of
829 the death of the victim from other local agencies to substitute for direct reports to the attorney for the
830 Commonwealth and the local law-enforcement agency.

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

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

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

845 I. When a child for whom a report of suspected abuse or neglect has been received and is under
846 investigation or receiving family assessment and the child and/or the child's parents or other persons
847 responsible for the child's care who are the subject of the report that is under investigation or family
848 assessment have relocated out of the jurisdiction of the local department, the local department shall
849 notify the child protective services agency in the jurisdiction to which the child and/or such persons
850 have relocated, whether inside or outside of the Commonwealth, and complete such investigation or
851 family assessment by requesting such agency's assistance in completing the investigation or family
852 assessment. The local department that completes the investigation or family assessment shall forward to
853 the receiving agency relevant portions of the case record in order for the receiving agency to arrange
854 protective and rehabilitative services as required by this section.

855 J. Upon receipt of a report of child abuse or neglect, the local department shall determine the validity
856 of such report and shall make a determination to conduct an investigation pursuant to § 63.1-248.6:01
857 or, if designated as a child protective services differential response agency by the Department according
858 to § 63.1-248.2:1, a family assessment pursuant to § 63.1-248.6:02. *However, when a child has been*

delivered to an infant-receiving facility and notice is provided to the local board of social services pursuant to § 16.1-241.4, the local board shall not for that reason alone initiate a child protective services investigation or family assessment.

K. The local department shall foster, when practicable, the creation, maintenance and coordination of hospital and community-based multi-disciplinary teams which shall include where possible, but not be limited to, members of the medical, mental health, social work, nursing, education, legal and law-enforcement professions. Such teams shall assist the local departments in identifying abused and neglected children; coordinating medical, social, and legal services for the children and their families; developing innovative programs for detection and prevention of child abuse; promoting community concern and action in the area of child abuse and neglect; and disseminating information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat child abuse and neglect. These teams may be the family assessment and planning teams established pursuant to § 2.2-5207. Multi-disciplinary teams may develop agreements regarding the exchange of information among the parties for the purposes of the investigation and disposition of complaints of child abuse and neglect, delivery of services, and child protection. Any information exchanged in accordance with the agreement shall not be considered to be a violation of the provisions of § 63.1-53 or § 63.1-209.

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

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

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

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

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

§ 63.1-248.9. Authority to take child into custody.

A. A physician or protective service worker of a local department or law-enforcement official investigating a report or complaint of abuse and neglect may take a child into custody for up to seventy-two hours without prior approval of parents or guardians provided:

1. The circumstances of the child are such that continuing in his place of residence or in the care or custody of the parent, guardian, custodian or other person responsible for the child's care, presents an imminent danger to the child's life or health to the extent that severe or irremediable injury would be likely to result or if evidence of abuse is perishable or subject to deterioration before a hearing can be held or if the child has been delivered to an infant-receiving facility, in accordance with the provisions of § 16.1-241.4; and

2. A court order is not immediately obtainable; and

3. The court has set up procedures for placing such children; and

4. Following taking the child into custody, the parents or guardians are notified as soon as practicable that he is in custody; and

5. A report is made to the local department; and

6. The court is notified and the person or agency taking custody of such child obtains, as soon as possible, but in no event later than seventy-two hours, an emergency removal order pursuant to § 16.1-251 or an emergency custody order pursuant to § 16.1-241.4; however, if a preliminary removal order is issued after a hearing held in accordance with § 16.1-252 within seventy-two hours of the removal of the child, an emergency removal order pursuant to § 16.1-251 shall not be necessary.

B. If the seventy-two-hour period for holding a child in custody and for obtaining a preliminary or emergency removal order expires on a Saturday, Sunday, or legal holiday or day on which the court is lawfully closed, the seventy-two hours shall be extended to the next day that is not a Saturday, Sunday,

920 or legal holiday or day on which the court is lawfully closed.

921 2. That the provisions of this act shall expire on July 1, 2010.