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**SENATE BILL NO. 641**

Offered January 18, 2002

*A BILL to amend and reenact § 16.1-228 of the Code of Virginia, relating to definitions; family abuse protective orders.*

\_\_\_\_\_  
Patron—Watkins

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Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That § 16.1-228 of the Code of Virginia is amended and reenacted as follows:**

§ 16.1-228. Definitions.

When used in this chapter, unless the context otherwise requires:

"Abused or neglected child" means any child:

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

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

3. Whose parents or other person responsible for his care abandons such child;

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

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

"Adoptive home" means the place of residence of any natural person in which a child resides as a member of the household and in which he has been placed for the purposes of adoption or in which he has been legally adopted by another member of the household.

"Adult" means a person eighteen years of age or older.

"Ancillary crime" or "ancillary charge" means any delinquent act committed by a juvenile as a part of the same act or transaction as, or which constitutes a part of a common scheme or plan with, a delinquent act which would be a felony if committed by an adult.

"Boot camp" means a short term secure or nonsecure juvenile residential facility with highly structured components including, but not limited to, military style drill and ceremony, physical labor, education and rigid discipline, and no less than six months of intensive aftercare.

"Child," "juvenile" or "minor" means a person less than eighteen years of age.

"Child welfare agency" means a child-placing agency, child-caring institution or independent foster home as defined in § 63.1-195.

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

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

"Child in need of supervision" means:

1. A child who, while subject to compulsory school attendance, is habitually and without justification absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of any and all educational services and programs that are required to be provided by law and which meet the child's particular educational needs, (ii) the school system from which the child is absent or other appropriate agency has made a reasonable effort to effect the child's regular attendance without success,

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SB641

59 and (iii) the school system has provided documentation that it has complied with the provisions of  
60 § 22.1-258; or

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

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

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

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

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

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

86 "Family or household member" means (i) the person's spouse, whether or not he or she resides in the  
87 same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same  
88 home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters,  
89 grandparents and grandchildren, regardless of whether such persons reside in the same home with the  
90 person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and  
91 sisters-in-law who reside in the same home with the person, (v) any individual who has a child in  
92 common with the person, whether or not the person and that individual have been married or have  
93 resided together at any time, ~~or~~ (vi) any individual who cohabits or who, within the previous twelve  
94 months, cohabited with the person, and any children of either of them then residing in the same home  
95 with the person *or (vii) any individual who is currently or was formerly involved in a substantive,*  
96 *intimate dating relationship with the person; the existence of such a substantive relationship shall be*  
97 *determined based on the following considerations: (a) the length of the relationship, (b) the nature of*  
98 *the relationship and (c) the frequency of interaction between the persons involved in the relationship. A*  
99 *casual relationship or ordinary fraternization in a business or social context does not constitute a dating*  
100 *relationship.*

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

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

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

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

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

120 "Legal custody" means (i) a legal status created by court order which vests in a custodian the right to

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

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

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

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

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

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

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

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

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