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SENATE BILL NO. 1385

Offered January 11, 2023

Prefiled January 11, 2023

A BILL to amend and reenact §§ 16.1-241, 18.2-71, 18.2-73, 18.2-74.1, 18.2-75, and 18.2-76 of the Code of Virginia and to repeal §§ 18.2-72, 18.2-74, and 32.1-92.2 of the Code of Virginia, relating to abortion; when lawful; 15-week gestational age; exceptions; penalty.

Patrons—Newman, Cosgrove, Obenshain, Reeves, Ruff and Stanley

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-241, 18.2-71, 18.2-73, 18.2-74.1, 18.2-75, and 18.2-76 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-241. Jurisdiction; consent for abortion.

The judges of the juvenile and domestic relations district court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county, over all cases, matters and proceedings involving:

A. The custody, visitation, support, control or disposition of a child:

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent except where the jurisdiction of the juvenile court has been terminated or divested;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

3. Whose custody, visitation or support is a subject of controversy or requires determination. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, except as provided in § 16.1-244;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817 or whose parent or parents for good cause desire to be relieved of his care and custody;

5. Where the termination of residual parental rights and responsibilities is sought. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in § 16.1-244;

6. Who is charged with a traffic infraction as defined in § 46.2-100; or

7. Who is alleged to have refused to take a blood test in violation of § 18.2-268.2.

In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 16 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 16 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. A determination by the juvenile court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § 16.1-269.6.

In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be

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59 divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

60 The authority of the juvenile court to adjudicate matters involving the custody, visitation, support,
61 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,
62 father or legal guardian but shall include petitions filed at any time by any party with a legitimate
63 interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not
64 be limited to, grandparents, step-grandparents, stepparents, former stepparents, blood relatives and family
65 members. A party with a legitimate interest shall not include any person (i) whose parental rights have
66 been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives
67 from or through a person whose parental rights have been terminated by court order, either voluntarily
68 or involuntarily, including, but not limited to, grandparents, stepparents, former stepparents, blood
69 relatives and family members, if the child subsequently has been legally adopted, except where a final
70 order of adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of
71 subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another
72 state, the United States, or any foreign jurisdiction, when the child who is the subject of the petition was
73 conceived as a result of such violation. The authority of the juvenile court to consider a petition
74 involving the custody of a child shall not be proscribed or limited where the child has previously been
75 awarded to the custody of a local board of social services.

76 A1. Making specific findings of fact required by state or federal law to enable a child to apply for or
77 receive a state or federal benefit. For the purposes of this subsection only, when the court has obtained
78 jurisdiction over the case of any child, the court may continue to exercise its jurisdiction until such
79 person reaches 21 years of age, for the purpose of entering findings of fact or amending past orders, to
80 include findings of fact necessary for the person to petition the federal government for status as a
81 special immigrant juvenile, as defined by 8 U.S.C. § 1101(a)(27)(J).

82 B. The admission of minors for inpatient treatment in a mental health facility in accordance with the
83 provisions of Article 16 (§ 16.1-335 et seq.) and the involuntary admission of a person with mental
84 illness or judicial certification of eligibility for admission to a training center for persons with
85 intellectual disability in accordance with the provisions of Chapter 8 (§ 37.2-800 et seq.) of Title 37.2.
86 Jurisdiction of the involuntary admission and certification of adults shall be concurrent with the general
87 district court.

88 C. Except as provided in subsections D and H, judicial consent to such activities as may require
89 parental consent may be given for a child who has been separated from his parents, guardian, legal
90 custodian or other person standing in loco parentis and is in the custody of the court when such consent
91 is required by law.

92 D. Judicial consent for emergency surgical or medical treatment for a child who is neither married
93 nor has ever been married, when the consent of his parent, guardian, legal custodian or other person
94 standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person
95 standing in loco parentis (i) is not a resident of the Commonwealth, (ii) has his whereabouts unknown,
96 (iii) cannot be consulted with promptness, reasonable under the circumstances, or (iv) fails to give such
97 consent or provide such treatment when requested by the judge to do so.

98 E. Any person charged with deserting, abandoning or failing to provide support for any person in
99 violation of law.

100 F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

101 1. Who has been abused or neglected;

102 2. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817
103 or is otherwise before the court pursuant to subdivision A 4; or

104 3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court
105 finds that such person has by overt act or omission induced, caused, encouraged or contributed to the
106 conduct of the child complained of in the petition.

107 G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other
108 person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services
109 that are required by law to be provided for that child or such child's parent, guardian, legal custodian or
110 other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not
111 exclusive of that of courts having equity jurisdiction as provided in § 16.1-244.

112 H. Judicial consent to apply for a work permit for a child when such child is separated from his
113 parents, legal guardian or other person standing in loco parentis.

114 I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or
115 neglect of children or with any violation of law that causes or tends to cause a child to come within the
116 purview of this law, or with any other offense against the person of a child. In prosecution for felonies
117 over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is
118 probable cause.

119 J. All offenses in which one family or household member is charged with an offense in which
120 another family or household member is the victim and all offenses under § 18.2-49.1.

121 In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to
122 determining whether or not there is probable cause. Any objection based on jurisdiction under this
123 subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial,
124 before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it
125 shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for
126 challenging directly or collaterally the jurisdiction of the court in which the case is tried.

127 K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily
128 relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such
129 parental rights. No such petition shall be accepted, however, after the child has been placed in the home
130 of adoptive parents.

131 L. Any person who seeks spousal support after having separated from his spouse. A decision under
132 this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court.
133 A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

134 M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1,
135 16.1-253.4, or 16.1-279.1, and all petitions filed for the purpose of obtaining an order of protection
136 pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10 if either the alleged victim or the respondent is a
137 juvenile.

138 N. Any person who escapes or remains away without proper authority from a residential care facility
139 in which he had been placed by the court or as a result of his commitment to the Virginia Department
140 of Juvenile Justice.

141 O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.).

142 P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 19
143 (§ 63.2-1900 et seq.) of Title 63.2, or by another state in the same manner as if the orders were entered
144 by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the
145 juvenile and domestic relations district court.

146 Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.
147 A circuit court shall have concurrent original jurisdiction to the extent provided for in § 20-49.2.

148 R. [Repealed.]

149 S. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

150 T. Petitions to enforce any request for information or subpoena that is not complied with or to
151 review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect
152 pursuant to § 63.2-1526.

153 U. Petitions filed in connection with parental placement adoption consent hearings pursuant to
154 § 63.2-1233. Such proceedings shall be advanced on the docket so as to be heard by the court within 10
155 days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible
156 disposition.

157 V. Petitions filed for the purpose of obtaining the court's assistance with the execution of consent to
158 an adoption when the consent to an adoption is executed pursuant to the laws of another state and the
159 laws of that state provide for the execution of consent to an adoption in the court of the
160 Commonwealth.

161 W. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion
162 if a minor elects not to seek consent of an authorized person.

163 After a hearing, a judge shall issue an order authorizing a physician to perform an abortion, without
164 the consent of any authorized person, if he finds that (i) the minor is mature enough and well enough
165 informed to make her abortion decision, in consultation with her physician, independent of the wishes of
166 any authorized person, or (ii) the minor is not mature enough or well enough informed to make such
167 decision, but the desired abortion would be in her best interest.

168 If the judge authorizes an abortion based on the best interests of the minor, such order shall
169 expressly state that such authorization is subject to the physician or his agent giving notice of intent to
170 perform the abortion; however, no such notice shall be required if the judge finds that such notice would
171 not be in the best interest of the minor. In determining whether notice is in the best interest of the
172 minor, the judge shall consider the totality of the circumstances; however, he shall find that notice is not
173 in the best interest of the minor if he finds that (a) one or more authorized persons with whom the
174 minor regularly and customarily resides is abusive or neglectful and (b) every other authorized person, if
175 any, is either abusive or neglectful or has refused to accept responsibility as parent, legal guardian,
176 custodian or person standing in loco parentis.

177 The minor may participate in the court proceedings on her own behalf, and the court may appoint a
178 guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and
179 shall, upon her request, appoint counsel for her.

180 Notwithstanding any other provision of law, the provisions of this subsection shall govern
181 proceedings relating to consent for a minor's abortion. Court proceedings under this subsection and

182 records of such proceedings shall be confidential. Such proceedings shall be given precedence over other
183 pending matters so that the court may reach a decision promptly and without delay in order to serve the
184 best interests of the minor. Court proceedings under this subsection shall be heard and decided as soon
185 as practicable but in no event later than four days after the petition is filed.

186 An expedited confidential appeal to the circuit court shall be available to any minor for whom the
187 court denies an order authorizing an abortion without consent or without notice. Any such appeal shall
188 be heard and decided no later than five days after the appeal is filed. The time periods required by this
189 subsection shall be subject to subsection B of § 1-210. An order authorizing an abortion without consent
190 or without notice shall not be subject to appeal.

191 No filing fees shall be required of the minor at trial or upon appeal.

192 If either the original court or the circuit court fails to act within the time periods required by this
193 subsection, the court before which the proceeding is pending shall immediately authorize a physician to
194 perform the abortion without consent of or notice to an authorized person.

195 Nothing contained in this subsection shall be construed to authorize a physician to perform an
196 abortion on a minor in circumstances or in a manner that would be unlawful if performed on an adult
197 woman.

198 A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent
199 has been obtained or the minor delivers to the physician a court order entered pursuant to this section
200 and the physician or his agent provides such notice as such order may require. However, neither consent
201 nor judicial authorization nor notice shall be required if the minor declares that she is abused or
202 neglected and the attending physician has reason to suspect that the minor may be an abused or
203 neglected child as defined in § 63.2-100 and reports the suspected abuse or neglect in accordance with
204 § 63.2-1509; or if there is a medical emergency, in which case the attending physician shall certify the
205 facts justifying the exception in the minor's medical record.

206 For purposes of this subsection:

207 "Authorization" means the minor has delivered to the physician a notarized, written statement signed
208 by an authorized person that the authorized person knows of the minor's intent to have an abortion and
209 consents to such abortion being performed on the minor.

210 "Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or
211 (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with
212 whom the minor regularly and customarily resides and who has care and control of the minor. Any
213 person who knows he is not an authorized person and who knowingly and willfully signs an
214 authorization statement consenting to an abortion for a minor is guilty of a Class 3 misdemeanor.

215 "Consent" means that (i) the physician has given notice of intent to perform the abortion and has
216 received authorization from an authorized person, or (ii) at least one authorized person is present with
217 the minor seeking the abortion and provides written authorization to the physician, which shall be
218 witnessed by the physician or an agent thereof. In either case, the written authorization shall be
219 incorporated into the minor's medical record and maintained as a part thereof.

220 "Medical emergency" means any condition ~~which that, on the basis of the physician's good faith~~
221 *using best* clinical judgment, so complicates the medical condition of the pregnant minor as to
222 necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create a
223 serious risk of substantial and irreversible impairment of a major bodily function, *not including*
224 *psychological or emotional conditions*.

225 "Notice of intent to perform the abortion" means that (i) the physician or his agent has given actual
226 notice of his intention to perform such abortion to an authorized person, either in person or by
227 telephone, at least 24 hours previous to the performance of the abortion or (ii) the physician or his
228 agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person
229 by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at
230 least 72 hours prior to the performance of the abortion.

231 "Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical
232 procedure or to induce a miscarriage as provided in § ~~18.2-72~~, 18.2-73, ~~or 18.2-74~~.

233 "Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid
234 marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any
235 of the Armed Forces of the United States; (iii) willingly living separate and apart from his or her
236 parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an
237 order of emancipation pursuant to Article 15 (§ 16.1-331 et seq.).

238 X. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) relating to standby guardians for minor
239 children.

240 Y. Petitions involving minors filed pursuant to § 32.1-45.1 relating to obtaining a blood specimen or
241 test results.

242 Z. Petitions filed pursuant to § 16.1-283.3 for review of voluntary agreements for continuation of
243 services and support for persons who meet the eligibility criteria for the Fostering Futures program set

244 forth in § 63.2-919.

245 The ages specified in this law refer to the age of the child at the time of the acts complained of in
246 the petition.

247 Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of
248 any process in a proceeding pursuant to subdivision A 3, except as provided in subdivision A 6 of
249 § 17.1-272, or subsection B, D, M, or R.

250 Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of
251 subsection W shall be guilty of a Class 3 misdemeanor.

252 Upon certification by the juvenile and domestic relations district court of any felony charge and
253 ancillary misdemeanor charge committed by an adult or when an appeal of a conviction or adjudication
254 of delinquency of an offense in the juvenile and domestic relations district court is noted, jurisdiction as
255 to such charges shall vest in the circuit court, unless such case is reopened pursuant to § 16.1-133.1; a
256 final judgment, order, or decree is modified, vacated, or suspended pursuant to Supreme Court of
257 Virginia Rule 1:1; or the appeal has been withdrawn in the juvenile and domestic relations district court
258 within 10 days pursuant to § 16.1-133.

259 **§ 18.2-71. Producing abortion or miscarriage, etc.; penalty.**

260 Except as provided in other sections of this article, if any person administer to, or cause to be taken
261 by, a woman; any drug or other thing, or use means, with intent to destroy her unborn child, or to
262 produce abortion or miscarriage, and thereby destroy such child, or produce such abortion or
263 miscarriage, he shall be is guilty of a Class 4 felony. *For purposes of this article, such acts shall not*
264 *include an act performed with the purpose of (i) removing a dead unborn child whose death is due to*
265 *natural causes, including a miscarriage or stillbirth, or (ii) removing an ectopic pregnancy.*

266 **§ 18.2-73. When abortion unlawful; gestational age; exceptions.**

267 A. Notwithstanding any of the provisions of § 18.2-71 and in addition to the provisions of ~~§ 18.2-72~~,
268 it shall be is lawful for any physician licensed by the Board of Medicine to practice medicine and
269 surgery; to terminate or attempt to terminate a human pregnancy or aid or assist in the termination of a
270 human pregnancy by performing an abortion or causing a miscarriage on any woman ~~during the second~~
271 ~~trimester of pregnancy and prior to the third trimester of pregnancy provided such only if the physician~~
272 *first determines the gestational age of the unborn child and, using best clinical judgment, determines*
273 *that such gestational age of the unborn child is not more than 15 weeks.*

274 *If the gestational age of the unborn child is determined to be more than 15 weeks, it is lawful for*
275 *any physician licensed by the Board of Medicine to practice medicine and surgery to terminate or*
276 *attempt to terminate a human pregnancy or aid or assist in the termination of a human pregnancy by*
277 *performing an abortion or causing a miscarriage on any woman only if (i) the physician determines,*
278 *using best clinical judgment, that the continuation of the pregnancy will result in the death of the*
279 *woman or substantially and irreversibly impair one or more of such woman's major bodily functions,*
280 *not including psychological or emotional conditions, or (ii) the pregnancy is the result of rape or incest.*

281 B. Any abortion procedure is performed after the unborn child's gestational age is determined to be
282 more than 15 weeks shall be performed in a hospital licensed by the State Department of Health or
283 operated by the Department of Behavioral Health and Developmental Services.

284 C. Measures for life support for the child of such abortion or miscarriage shall be available and
285 utilized if there is any clearly visible evidence of viability.

286 **§ 18.2-74.1. Abortion, etc., when necessary to save life of woman.**

287 In the event it is necessary for a licensed physician to terminate a human pregnancy or assist in the
288 termination of a human pregnancy by performing an abortion or causing a miscarriage on any woman in
289 order to save her life, in the opinion of the physician so performing the abortion or causing the
290 miscarriage, §§ 18.2-71, and 18.2-73 and ~~18.2-74~~ shall not be applicable.

291 **§ 18.2-75. Conscience clause.**

292 Nothing in §§ ~~18.2-72~~, § 18.2-73 or ~~§ 18.2-74~~ shall require a hospital or other medical facility or
293 physician to admit any patient under the provisions hereof for the purpose of performing an abortion. In
294 addition, any person who shall state in writing an objection to any abortion or all abortions on personal,
295 ethical, moral or religious grounds shall not be required to participate in procedures which will result in
296 such abortion, and the refusal of such person, hospital or other medical facility to participate therein
297 shall not form the basis of any claim for damages on account of such refusal or for any disciplinary or
298 recriminatory action against such person, nor shall any such person be denied employment because of
299 such objection or refusal. The written objection shall remain in effect until such person shall revoke it in
300 writing or terminate his association with the facility with which it is filed.

301 **§ 18.2-76. Informed written consent required.**

302 Before performing any abortion or inducing any miscarriage or terminating a pregnancy as provided
303 in ~~§ 18.2-72~~, 18.2-73, or ~~18.2-74~~, the physician or, if such abortion, induction, or termination is to be
304 performed pursuant to ~~§ 18.2-72~~, either the physician or the nurse practitioner authorized pursuant to

305 clause (ii) of ~~§ 18.2-72~~ to perform such abortion, induction, or termination shall obtain the informed
306 written consent of the pregnant woman. However, if the woman has been adjudicated incapacitated by
307 any court of competent jurisdiction or if the physician ~~or, if the abortion, induction, or termination is to~~
308 ~~be performed pursuant to § 18.2-72~~, either the physician or the nurse practitioner authorized pursuant to
309 clause (ii) of ~~§ 18.2-72~~ to perform such abortion, induction, or termination knows or has good reason to
310 believe that such woman is incapacitated as adjudicated by a court of competent jurisdiction, then only
311 after permission is given in writing by a parent, guardian, committee, or other person standing in loco
312 parentis to the woman; may the physician ~~or, if the abortion, induction, or termination is to be~~
313 ~~performed pursuant to § 18.2-72~~, either the physician or the nurse practitioner authorized pursuant to
314 clause (ii) of ~~§ 18.2-72~~ to perform such abortion, induction, or termination perform the abortion or
315 otherwise terminate the pregnancy.

316 **2. That §§ 18.2-72, 18.2-74, and 32.1-92.2 of the Code of Virginia are repealed.**

317 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**
318 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
319 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
320 **correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I,**
321 **requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of**
322 **\$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
323 **appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile**
324 **Justice.**

325 **4. That this act shall be referred to as the Pain-Capable Unborn Child Protection Act.**