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SENATE BILL NO. 1472

Offered January 17, 2023

A *BILL to amend and reenact § 16.1-278.2 of the Code of Virginia, relating to violations of child protective orders; penalty.*

Patron—Stanley

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-278.2 of the Code of Virginia is amended and reenacted as follows:

§ 16.1-278.2. Abused, neglected, or abandoned children or children without parental care.

A. Within 60 days of a preliminary removal order hearing held pursuant to § 16.1-252 or a hearing on a preliminary protective order held pursuant to § 16.1-253, a dispositional hearing shall be held if the court found abuse or neglect and (i) removed the child from his home or (ii) entered a preliminary protective order. Notice of the dispositional hearing shall be provided to the child's parent, guardian, legal custodian, or other person standing in loco parentis in accordance with § 16.1-263. The hearing shall be held and a dispositional order may be entered, although a parent, guardian, legal custodian, or person standing in loco parentis fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort. Notice shall also be provided to the local department of social services, the guardian ad litem and, if appointed, the court-appointed special advocate.

If a child is found to be (a) abused or neglected; (b) at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in his care; or (c) abandoned by his parent or other custodian, or without parental care and guardianship because of his parent's absence or physical or mental incapacity, the juvenile court or the circuit court may make any of the following orders of disposition to protect the welfare of the child:

1. Enter an order pursuant to the provisions of § 16.1-278;
2. Permit the child to remain with his parent, subject to such conditions and limitations as the court may order with respect to such child and his parent or other adult occupant of the same dwelling;
3. Prohibit or limit contact as the court deems appropriate between the child and his parent or other adult occupant of the same dwelling whose presence tends to endanger the child's life, health or normal development. The prohibition may exclude any such individual from the home under such conditions as the court may prescribe for a period to be determined by the court but in no event for longer than 180 days from the date of such determination. A hearing shall be held within 150 days to determine further disposition of the matter that may include limiting or prohibiting contact for another 180 days;

4. Permit the local board of social services or a public agency designated by the community policy and management team to place the child, subject to the provisions of § 16.1-281, in suitable family homes, child-caring institutions, residential facilities, or independent living arrangements with legal custody remaining with the parents or guardians. The local board or public agency and the parents or guardians shall enter into an agreement which shall specify the responsibilities of each for the care and control of the child. The board or public agency that places the child shall have the final authority to determine the appropriate placement for the child. Nothing herein shall limit the authority of the court to review the child's status in foster care in accordance with subsection G of § 16.1-281 or to review the foster care plan through a petition filed pursuant to subsection A of § 16.1-282.

Any order allowing a local board or public agency to place a child where legal custody remains with the parents or guardians as provided in this section shall be entered only upon a finding by the court that reasonable efforts have been made to prevent placement out of the home and that continued placement in the home would be contrary to the welfare of the child; and the order shall so state.

5. After a finding that there is no less drastic alternative, transfer legal custody, subject to the provisions of § 16.1-281, to any of the following:

- a. A person with a legitimate interest subject to the provisions of subsection A1;
- b. A child welfare agency, private organization or facility that is licensed or otherwise authorized by law to receive and provide care for such child; however, a court shall not transfer legal custody of an abused or neglected child to an agency, organization or facility out of the Commonwealth without the approval of the Commissioner of Social Services; or
- c. The local board of social services of the county or city in which the court has jurisdiction or, at

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59 the discretion of the court, to the local board of the county or city in which the child has residence if
60 other than the county or city in which the court has jurisdiction. The local board shall accept the child
61 for care and custody, provided that it has been given reasonable notice of the pendency of the case and
62 an opportunity to be heard. However, in an emergency in the county or city in which the court has
63 jurisdiction, the local board may be required to accept a child for a period not to exceed 14 days
64 without prior notice or an opportunity to be heard if the judge entering the placement order describes
65 the emergency and the need for such temporary placement in the order. Nothing in this section shall
66 prohibit the commitment of a child to any local board of social services in the Commonwealth when the
67 local board consents to the commitment. The board to which the child is committed shall have the final
68 authority to determine the appropriate placement for the child. Nothing herein shall limit the authority of
69 the court to review the child's status in foster care in accordance with subsection G of § 16.1-281 or to
70 review the foster care plan through a petition filed pursuant to subsection A of § 16.1-282.

71 Any order authorizing removal from the home and transferring legal custody of a child to a local
72 board of social services as provided in this section shall be entered only upon a finding by the court that
73 reasonable efforts have been made to prevent removal and that continued placement in the home would
74 be contrary to the welfare of the child; and the order shall so state.

75 A finding by the court that reasonable efforts were made to prevent removal of the child from his
76 home shall not be required if the court finds that (i) the residual parental rights of the parent regarding a
77 sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of
78 an offense under the laws of the Commonwealth or a substantially similar law of any other state, the
79 United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony
80 attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child
81 of the parent, a child with whom the parent resided at the time such offense occurred, or the other
82 parent of the child; (iii) the parent has been convicted of an offense under the laws of the
83 Commonwealth or a substantially similar law of any other state, the United States, or any foreign
84 jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding
85 resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the
86 parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear
87 and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned
88 a child under circumstances that would justify the termination of residual parental rights pursuant to
89 subsection D of § 16.1-283.

90 As used in this section:

91 "Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual
92 abuse, if the victim of such conduct was a child of the parent or child with whom the parent resided at
93 the time such conduct occurred, including the failure to protect such a child from such conduct, which
94 conduct or failure to protect (i) evinces a wanton or depraved indifference to human life or (ii) has
95 resulted in the death of such a child or in serious bodily injury to such a child.

96 "Chronic abuse" or "chronic sexual abuse" means recurring acts of physical abuse that place the
97 child's health, safety and well-being at risk.

98 "Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical
99 pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily
100 member, organ or mental faculty.

101 "Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once but
102 otherwise meets the definition of "aggravated circumstances."

103 6. Transfer legal custody pursuant to subdivision 5 of this section and order the parent to participate
104 in such services and programs or to refrain from such conduct as the court may prescribe; or

105 7. Terminate the rights of the parent pursuant to § 16.1-283.

106 A1. Any order transferring custody of the child to a person with a legitimate interest pursuant to
107 subdivision A 5 a shall be entered only upon a finding, based upon a preponderance of the evidence,
108 that such person is one who, after an investigation as directed by the court, (i) is found by the court to
109 be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous
110 relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and
111 (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so
112 state. The court's order transferring custody to a person with a legitimate interest should further provide
113 for, as appropriate, any terms or conditions which would promote the child's interest and welfare;
114 ongoing provision of social services to the child and the child's custodian; and court review of the
115 child's placement.

116 B. If the child has been placed in foster care, at the dispositional hearing the court shall review the
117 foster care plan for the child filed in accordance with § 16.1-281 by the local department of social
118 services, a public agency designated by the community policy and management team which places a
119 child through an agreement with the parents or guardians where legal custody remains with the parents
120 or guardians, or child welfare agency.

121 C. Any preliminary protective orders entered on behalf of the child shall be reviewed at the
122 dispositional hearing and may be incorporated, as appropriate, in the dispositional order. *If such a*
123 *protective order is incorporated in a dispositional order issued pursuant to this section, a violation of*
124 *such protective order is punishable as a Class 1 misdemeanor.*
125 D. A dispositional order entered pursuant to this section is a final order from which an appeal may
126 be taken in accordance with § 16.1-296.