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## HOUSE BILL NO. 1420

House Amendments in [ ] - February 7, 2024

A *BILL to amend and reenact §§ 16.1-228, 16.1-278.8, and 18.2-371 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 16.1-278.9:1, relating to juveniles; adjudication of delinquency.*

Patron Prior to Engrossment—Delegate Watts

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 16.1-228, 16.1-278.8, and 18.2-371 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 16.1-278.9:1 as follows:**

**§ 16.1-228. Definitions.**

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

"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, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

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. Further, a decision by parents who have legal authority for the child or, in the absence of parents with legal authority for the child, any person with legal authority for the child who refuses a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person with legal authority and the child; (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person with legal authority and the child have considered alternative treatment options; and (iv) the parents or other person with legal authority and the child believe in good faith that such decision is in the child's best interest. No child whose parent or other person responsible for his care allows the child to engage in independent activities without adult supervision shall for that reason alone be considered to be an abused or neglected child, provided that (a) such independent activities are appropriate based on the child's age, maturity, and physical and mental abilities and (b) such lack of supervision does not constitute conduct that is so grossly negligent as to endanger the health or safety of the child. Such independent activities include traveling to or from school or nearby locations by bicycle or on foot, playing outdoors, or remaining at home for a reasonable period of time. Nothing in this subdivision shall be construed to limit the provisions of § 16.1-278.4;

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

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

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;

6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55.1-2000, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a Tier III offender pursuant to § 9.1-902; or

7. Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in the federal Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7102 et seq., and in the federal Justice for Victims of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.

ENGROSSED

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59 If a civil proceeding under this chapter is based solely on the parent having left the child at a  
60 hospital or emergency medical services agency, it shall be an affirmative defense that such parent safely  
61 delivered the child within 30 days of the child's birth to (i) a hospital that provides 24-hour emergency  
62 services, (ii) an attended emergency medical services agency that employs emergency medical services  
63 personnel, or (iii) a newborn safety device located at and operated by such hospital or emergency  
64 medical services agency. For purposes of terminating parental rights pursuant to § 16.1-283 and  
65 placement for adoption, the court may find such a child is a neglected child upon the ground of  
66 abandonment.

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

70 "Adult" means a person 18 years of age or older.

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

74 "Child," "juvenile," or "minor" means a person who is (i) younger than 18 years of age or (ii) for  
75 purposes of the Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9 of  
76 Title 63.2, younger than 21 years of age and meets the eligibility criteria set forth in § 63.2-919.

77 "Child in need of services" means (i) a child whose behavior, conduct, or condition presents or  
78 results in a serious threat to the well-being and physical safety of the child ~~or~~; (ii) a child ~~under younger~~  
79 ~~than~~ the age of 14 whose behavior, conduct, or condition presents or results in a serious threat to the  
80 well-being and physical safety of another person; *or (iii) a child younger than 11 years of age who has*  
81 *committed a delinquent act*; however, no child who in good faith is under treatment solely by spiritual  
82 means through prayer in accordance with the tenets and practices of a recognized church or religious  
83 denomination shall for that reason alone be considered to be a child in need of services, nor shall any  
84 child who habitually remains away from or habitually deserts or abandons his family as a result of what  
85 the court or the local child protective services unit determines to be incidents of physical, emotional, or  
86 sexual abuse in the home be considered a child in need of services for that reason alone.

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

92 "Child in need of supervision" means:

93 1. A child who, while subject to compulsory school attendance, is habitually and without justification  
94 absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of  
95 any and all educational services and programs that are required to be provided by law and which meet  
96 the child's particular educational needs, (ii) the school system from which the child is absent or other  
97 appropriate agency has made a reasonable effort to effect the child's regular attendance without success,  
98 and (iii) the school system has provided documentation that it has complied with the provisions of  
99 § 22.1-258; or

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

107 "Child welfare agency" means a child-placing agency, child-caring institution or independent foster  
108 home as defined in § 63.2-100.

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

111 "Delinquent act" means (i) an act designated a crime under the law of the Commonwealth, or an  
112 ordinance of any city, county, town, or service district, or under federal law, (ii) a violation of  
113 § 18.2-308.7, or (iii) a violation of a court order as provided for in § 16.1-292, but does not include an  
114 act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a crime only if  
115 committed by a child.

116 "Delinquent child" means a child *11 years of age or older* who has committed a delinquent act or an  
117 adult who has committed a delinquent act prior to his ~~18th~~ *eighteenth* birthday, except where the  
118 jurisdiction of the juvenile court has been terminated under the provisions of § 16.1-269.6.

119 "Department" means the Department of Juvenile Justice and "Director" means the administrative head  
120 in charge thereof or such of his assistants and subordinates as are designated by him to discharge the

duties imposed upon him under this law.

"Driver's license" means any document issued under Chapter 3 (§ 46.2-300 et seq.) of Title 46.2, or the comparable law of another jurisdiction, authorizing the operation of a motor vehicle upon the highways.

"Family abuse" means any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person against such person's family or household member. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.

"Family or household member" means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous 12 months, cohabited with the person, and any children of either of them then residing in the same home with the person.

"Fictive kin" means persons who are not related to a child by blood or adoption but have an established relationship with the child or his family.

"Foster care services" means the provision of a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in § 63.2-100 or in need of services as defined in this section and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services or a public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardians, (iii) has been committed or entrusted to a local board of social services or child welfare agency, (iv) has been placed under the supervisory responsibility of the local board pursuant to § 16.1-293, or (v) is living with a relative participating in the Federal-Funded Kinship Guardianship Assistance program set forth in § 63.2-1305 and developed consistent with 42 U.S.C. § 673 or the State-Funded Kinship Guardianship Assistance program set forth in § 63.2-1306.

"Independent living arrangement" means placement of (i) a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency by the local board or licensed child-placing agency or (ii) a child at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department of Juvenile Justice immediately prior to placement by the Department of Juvenile Justice, in a living arrangement in which such child or person does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older and who has been committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. "Independent living services" may also mean services and activities provided to a person who (i) was in foster care on his ~~18th~~ *eighteenth* birthday and has not yet reached the age of 21 years; (ii) is between the ages of 18 and 21 and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local board of social services; or (iii) is a child at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department of Juvenile Justice immediately prior to placement in an independent living arrangement. "Independent living services" includes counseling, education, housing, employment, and money management skills development and access to essential documents and other appropriate services to help children or persons prepare for self-sufficiency.

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

"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

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

186 "Permanent foster care placement" means the place of residence in which a child resides and in  
187 which he has been placed pursuant to the provisions of §§ 63.2-900 and 63.2-908 with the expectation  
188 and agreement between the placing agency and the place of permanent foster care that the child shall  
189 remain in the placement until he reaches the age of majority unless modified by court order or unless  
190 removed pursuant to § 16.1-251 or 63.2-1517. A permanent foster care placement may be a place of  
191 residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term  
192 basis.

193 "Qualified individual" means a trained professional or licensed clinician who is not an employee of  
194 the local board of social services or licensed child-placing agency that placed the child in a qualified  
195 residential treatment program and is not affiliated with any placement setting in which children are  
196 placed by such local board of social services or licensed child-placing agency.

197 "Qualified residential treatment program" means a program that (i) provides 24-hour residential  
198 placement services for children in foster care; (ii) has adopted a trauma-informed treatment model that  
199 meets the clinical and other needs of children with serious emotional or behavioral disorders, including  
200 any clinical or other needs identified through assessments conducted pursuant to clause (viii) of this  
201 definition; (iii) employs registered or licensed nursing and other clinical staff who provide care, on site  
202 and within the scope of their practice, and are available 24 hours a day, 7 days a week; (iv) conducts  
203 outreach with the child's family members, including efforts to maintain connections between the child  
204 and his siblings and other family; documents and maintains records of such outreach efforts; and  
205 maintains contact information for any known biological family and fictive kin of the child; (v) whenever  
206 appropriate and in the best interest of the child, facilitates participation by family members in the child's  
207 treatment program before and after discharge and documents the manner in which such participation is  
208 facilitated; (vi) provides discharge planning and family-based aftercare support for at least six months  
209 after discharge; (vii) is licensed in accordance with 42 U.S.C. § 671(a)(10) and accredited by an  
210 organization approved by the federal Secretary of Health and Human Services; and (viii) requires that  
211 any child placed in the program receive an assessment within 30 days of such placement by a qualified  
212 individual that (a) assesses the strengths and needs of the child using an age-appropriate, evidence-based,  
213 validated, and functional assessment tool approved by the Commissioner of Social Services; (b)  
214 identifies whether the needs of the child can be met through placement with a family member or in a  
215 foster home or, if not, in a placement setting authorized by 42 U.S.C. § 672(k)(2), including a qualified  
216 residential treatment program, that would provide the most effective and appropriate level of care for the  
217 child in the least restrictive environment and be consistent with the short-term and long-term goals  
218 established for the child in his foster care or permanency plan; (c) establishes a list of short-term and  
219 long-term mental and behavioral health goals for the child; and (d) is documented in a written report to  
220 be filed with the court prior to any hearing on the child's placement pursuant to § 16.1-281, 16.1-282,  
221 16.1-282.1, or 16.1-282.2.

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

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

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

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

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

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

235 "Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of  
236 § 16.1-269.1 when committed by a juvenile 14 years of age or older.

237 **§ 16.1-278.8. Delinquent juveniles.**

238 A. If a juvenile *11 years of age or older* is found to be delinquent, except where such finding  
239 involves a refusal to take a breath test in violation of § 18.2-268.2 or a similar ordinance, the juvenile  
240 court or the circuit court may make any of the following orders of disposition for his supervision, care,  
241 and rehabilitation:

- 242 1. Enter an order pursuant to the provisions of § 16.1-278;
- 243 2. Permit the juvenile to remain with his parent, subject to such conditions and limitations as the

244 court may order with respect to the juvenile and his parent;

245 3. Order the parent of a juvenile living with him to participate in such programs, cooperate in such  
246 treatment or be subject to such conditions and limitations as the court may order and as are designed for  
247 the rehabilitation of the juvenile and his parent;

248 4. Defer disposition for a specific period of time established by the court with due regard for the  
249 gravity of the offense and the juvenile's history, after which time the charge may be dismissed by the  
250 judge if the juvenile exhibits good behavior during the period for which disposition is deferred;

251 5. Without entering a judgment of guilty and with the consent of the juvenile and his attorney, defer  
252 disposition of the delinquency charge for a specific period of time established by the court with due  
253 regard for the gravity of the offense and the juvenile's history, and place the juvenile on probation under  
254 such conditions and limitations as the court may prescribe. Upon fulfillment of the terms and conditions,  
255 the court shall discharge the juvenile and dismiss the proceedings against him. Discharge and dismissal  
256 under these provisions shall be without adjudication of guilt;

257 6. Order the parent of a juvenile with whom the juvenile does not reside to participate in such  
258 programs, cooperate in such treatment or be subject to such conditions and limitations as the court may  
259 order and as are designed for the rehabilitation of the juvenile where the court determines this  
260 participation to be in the best interest of the juvenile and other parties concerned and where the court  
261 determines it reasonable to expect the parent to be able to comply with such order;

262 7. Place the juvenile on probation under such conditions and limitations as the court may prescribe;

263 7a. Place the juvenile on probation and order treatment for the abuse or dependence on alcohol or  
264 drugs in a program licensed by the Department of Behavioral Health and Developmental Services for the  
265 treatment of juveniles for substance abuse provided that (i) the juvenile has received a substance abuse  
266 screening and assessment pursuant to § 16.1-273 and that such assessment reasonably indicates that the  
267 commission of the offense was motivated by, or closely related to, the habitual use of alcohol or drugs  
268 and indicates that the juvenile is in need of treatment for this condition; (ii) the juvenile has not  
269 previously been and is not currently being adjudicated for a violent juvenile felony; and (iii) such  
270 facility is available. Upon the juvenile's withdrawal, removal, or refusal to comply with the conditions of  
271 participation in the program, he shall be brought before the court for a hearing at which the court may  
272 impose any other disposition authorized by this section. The court shall review such placements at  
273 30-day intervals;

274 8. Impose a fine not to exceed \$500 upon such juvenile;

275 9. Suspend the motor vehicle and driver's license of such juvenile or impose a curfew on the juvenile  
276 as to the hours during which he may operate a motor vehicle. Any juvenile whose driver's license is  
277 suspended may be referred for an assessment and subsequent referral to appropriate services, upon such  
278 terms and conditions as the court may order. The court, in its discretion and upon a demonstration of  
279 hardship, may authorize the use of a restricted permit to operate a motor vehicle by any juvenile who  
280 enters such program for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to  
281 and from school. The restricted permit shall be issued in accordance with the provisions of such  
282 subsection. However, only an abstract of the court order that identifies the juvenile and the conditions  
283 under which the restricted license is to be issued shall be sent to the Department of Motor Vehicles.

284 If a curfew is imposed, the juvenile shall surrender his driver's license, which shall be held in the  
285 physical custody of the court during any period of curfew restriction. The court shall send an abstract of  
286 any order issued under the provisions of this section to the Department of Motor Vehicles, which shall  
287 preserve a record thereof. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this  
288 chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement  
289 officers, attorneys for the Commonwealth and courts. A copy of the court order, upon which shall be  
290 noted all curfew restrictions, shall be provided to the juvenile and shall contain such information  
291 regarding the juvenile as is reasonably necessary to identify him. The juvenile may operate a motor  
292 vehicle under the court order in accordance with its terms.

293 Any juvenile who operates a motor vehicle in violation of any restrictions imposed pursuant to this  
294 section is guilty of a violation of § 46.2-301.

295 The Department of Motor Vehicles shall refuse to issue a driver's license to any juvenile denied a  
296 driver's license until such time as is stipulated in the court order or until notification by the court of  
297 withdrawal of the order imposing the curfew;

298 10. Require the juvenile to make restitution or reparation to the aggrieved party or parties for actual  
299 damages or loss caused by the offense for which the juvenile was found to be delinquent;

300 11. Require the juvenile to participate in a public service project under such conditions as the court  
301 prescribes;

302 12. In case of traffic violations, impose only those penalties that are authorized to be imposed on  
303 adults for such violations. However, for those violations punishable by confinement if committed by an  
304 adult, confinement shall be imposed only as authorized by this title;

305 13. Transfer legal custody to any of the following:

306 a. A relative or other individual who, after study, is found by the court to be qualified to receive and  
307 care for the juvenile;

308 b. A child welfare agency, private organization or facility that is licensed or otherwise authorized by  
309 law to receive and provide care for such juvenile. The court shall not transfer legal custody of a  
310 delinquent juvenile to an agency, organization or facility outside of the Commonwealth without the  
311 approval of the Director; or

312 c. The local board of social services of the county or city in which the court has jurisdiction or, at  
313 the discretion of the court, to the local board of the county or city in which the juvenile has residence if  
314 other than the county or city in which the court has jurisdiction. The board shall accept the juvenile for  
315 care and custody, provided that it has been given reasonable notice of the pendency of the case and an  
316 opportunity to be heard. However, in an emergency in the county or city in which the court has  
317 jurisdiction, such local board may be required to temporarily accept a juvenile for a period not to exceed  
318 14 days without prior notice or an opportunity to be heard if the judge entering the placement order  
319 describes the emergency and the need for such temporary placement in the order. Nothing in this  
320 subdivision shall prohibit the commitment of a juvenile to any local board of social services in the  
321 Commonwealth when such local board consents to the commitment. The board to which the juvenile is  
322 committed shall have the final authority to determine the appropriate placement for the juvenile. Nothing  
323 herein shall limit the authority of the court to review the child's status in foster care in accordance with  
324 subsection G of § 16.1-281 or to review the foster care plan through a petition filed pursuant to  
325 subsection A of § 16.1-282. Any order authorizing removal from the home and transferring legal custody  
326 of a juvenile to a local board of social services as provided in this subdivision shall be entered only  
327 upon a finding by the court that reasonable efforts have been made to prevent removal and that  
328 continued placement in the home would be contrary to the welfare of the juvenile, and the order shall so  
329 state;

330 14. Unless waived by an agreement between the attorney for the Commonwealth and the juvenile  
331 and his attorney or other legal representative, upon consideration of the results of an investigation  
332 completed pursuant to § 16.1-273, commit the juvenile to the Department of Juvenile Justice, but only if  
333 (i) he is 11 years of age or older and has been adjudicated delinquent of an act enumerated in  
334 subsection B or C of § 16.1-269.1 or (ii) he is 14 years of age or older and the current offense is (a) an  
335 offense that would be a felony if committed by an adult, (b) an offense that would be a Class 1  
336 misdemeanor if committed by an adult and the juvenile has previously been found to be delinquent  
337 based on an offense that would be a felony if committed by an adult, or (c) an offense that would be a  
338 Class 1 misdemeanor if committed by an adult and the juvenile has previously been adjudicated  
339 delinquent of three or more offenses that would be a Class 1 misdemeanor if committed by an adult,  
340 and each such offense was not a part of a common act, transaction or scheme;

341 15. Impose the penalty authorized by § 16.1-284;

342 16. Impose the penalty authorized by § 16.1-284.1;

343 17. Unless waived by an agreement between the attorney for the Commonwealth and the juvenile  
344 and his attorney or other legal representative, upon consideration of the results of an investigation  
345 completed pursuant to § 16.1-273, impose the penalty authorized by § 16.1-285.1;

346 18. Impose the penalty authorized by § 16.1-278.9; or

347 19. Require the juvenile to participate in a gang-activity prevention program including, but not  
348 limited to, programs funded under the Virginia Juvenile Community Crime Control Act pursuant to  
349 § 16.1-309.7, if available, when a juvenile has been found delinquent of any of the following violations:  
350 § 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127,  
351 18.2-128, 18.2-137, 18.2-138, 18.2-146, or 18.2-147, or any violation of a local ordinance adopted  
352 pursuant to § 15.2-1812.2.

353 B. If the court finds a juvenile *11 years of age or older* delinquent of any of the following offenses,  
354 the court shall require the juvenile to make at least partial restitution or reparation for any property  
355 damage, for loss caused by the offense, or for actual medical expenses incurred by the victim as a result  
356 of the offense: § 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121,  
357 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or 18.2-147; or for any violation of a local ordinance  
358 adopted pursuant to § 15.2-1812.2. The court shall further require the juvenile to participate in a  
359 community service project under such conditions as the court prescribes.

360 ***§ 16.1-278.9:1. Delinquent act committed by a juvenile younger than 11 years of age; disposition.***

361 *If a juvenile younger than 11 years of age is found to have committed a delinquent act, such juvenile*  
362 *shall not be proceeded upon as delinquent pursuant to § 16.1-278.8; however, the court may make any*  
363 *orders of disposition authorized under § 16.1-278.4 or 16.1-278.5.*

364 **§ 18.2-371. Causing or encouraging acts rendering children delinquent, abused, etc.; penalty;**  
365 **abandoned infant.**

366 Any person 18 years of age or older, including the parent of any child, who (i) willfully contributes

to, encourages, or causes any act, omission, or condition that renders a child delinquent, in need of services, in need of supervision, or abused or neglected as defined in § 16.1-228 *or willfully contributes to, encourages, or causes any act, omission, or condition that causes a child younger than 11 years of age to commit a [ ~~criminal offense~~ delinquent act ]* or (ii) engages in consensual sexual intercourse or anal intercourse with or performs cunnilingus, fellatio, or anilingus upon or by a child 15 or older not his spouse, child, or grandchild is guilty of a Class 1 misdemeanor. This section shall not be construed as repealing, modifying, or in any way affecting §§ 18.2-18, 18.2-19, 18.2-61, 18.2-63, and 18.2-347.

If the prosecution under this section is based solely on the accused parent having left the child at a hospital or emergency medical services agency, it shall be an affirmative defense to prosecution of a parent under this section that such parent safely delivered the child within the first 30 days of the child's life to (a) a hospital that provides 24-hour emergency services, (b) an attended emergency medical services agency that employs emergency medical services personnel, or (c) a newborn safety device located at and operated by such hospital or emergency medical services agency. In order for the affirmative defense to apply, the child shall be delivered in a manner reasonably calculated to ensure the child's safety.

ENGROSSED

HB1420E