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HOUSE BILL NO. 362

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 26, 2024)

(Patron Prior to Substitute—Delegate McClure)

A BILL to amend and reenact §§ 16.1-228 and 18.2-308.1:8 of the Code of Virginia, relating to purchase, possession, or transportation of firearm; assault and battery of a family or household member or intimate partner; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-228 and 18.2-308.1:8 of the Code of Virginia are amended and reenacted 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.

If a civil proceeding under this chapter is based solely on the parent having left the child at a hospital or emergency medical services agency, it shall be an affirmative defense that such parent safely

60 delivered the child within 30 days of the child's birth to (i) a hospital that provides 24-hour emergency
61 services, (ii) an attended emergency medical services agency that employs emergency medical services
62 personnel, or (iii) a newborn safety device located at and operated by such hospital or emergency
63 medical services agency. For purposes of terminating parental rights pursuant to § 16.1-283 and
64 placement for adoption, the court may find such a child is a neglected child upon the ground of
65 abandonment.

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

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

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

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

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

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

90 "Child in need of supervision" means:

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

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

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

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

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

114 "Delinquent child" means a child who has committed a delinquent act or an adult who has committed
115 a delinquent act prior to his 18th birthday, except where the jurisdiction of the juvenile court has been
116 terminated under the provisions of § 16.1-269.6.

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

120 "Driver's license" means any document issued under Chapter 3 (§ 46.2-300 et seq.) of Title 46.2, or
121 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, *or (vii) the person's intimate partner.*

"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 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.

"Intimate partner" means an individual who, within the previous 12 months, was in a romantic, dating, or sexual relationship with the person.

"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 §§ 63.2-900 and 63.2-908 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 63.2-1517. 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.

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

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

"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.

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

"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 14 years of age or older.

§ 18.2-308.1:8. Purchase, possession, or transportation of firearm following an assault and battery of a family or household member or an intimate partner; penalty.

A. 1. Any person who knowingly and intentionally purchases, possesses, or transports any firearm following a misdemeanor conviction for an offense that occurred on or after July 1, 2021, for (i) the offense of assault and battery of a family or household member or (ii) an offense substantially similar to clause (i) under the laws of any other state or of the United States is guilty of a Class 1 misdemeanor.

2. Any person who knowingly and intentionally purchases, possesses, or transports any firearm following a misdemeanor conviction for an offense that occurred on or after July 1, 2024, for (i) the

offense of assault and battery against an intimate partner or (ii) an offense substantially similar to clause (i) under the laws of any other state or of the United States is guilty of a Class 1 misdemeanor.

B. For the purposes of this section, ~~"family":~~

"Family or household member" means (i) the person's spouse, whether or not he resides in the same home with the person; (ii) the person's former spouse, whether or not he resides in the same home with the person; ~~or~~ (iii) 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 (iv) any individual who cohabits or who, within the previous 12 months, cohabitated with the person.

"Intimate partner" means the same as that term is defined in § 16.1-228.

C. Any person prohibited from purchasing, possessing, or transporting a firearm pursuant to subsection A shall be prohibited from purchasing, possessing, or transporting a firearm for three years following the date of the conviction at which point the person convicted of such offense shall no longer be prohibited from purchasing, possessing, or transporting a firearm pursuant to subsection A. Such person shall have his firearms rights restored, unless such person receives another disqualifying conviction, is subject to a protective order that would restrict his rights to carry a firearm, or is otherwise prohibited by law from purchasing, possessing, or transporting a firearm.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.