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SENATE BILL NO. 37

Offered January 10, 2024

Prefiled December 16, 2023

A BILL to amend and reenact § 63.2-100 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 22.1-273.5, relating to minor students experiencing gender incongruence; parental notification of certain expressions and requests and parental permission for certain plans required; parental care.

 Patron—McGuire

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-100 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 22.1-273.5 as follows:

§ 22.1-273.5. Minor students experiencing gender incongruence; parental notification of certain expressions and requests and parental permission for certain plans required.

A. As used in this section, "gender incongruence" means a difference between an individual's biological sex and such individual's perceived or desired gender.

B. Each public elementary or secondary school principal or his designee shall, as soon as practicable, inform at least one parent of a minor student enrolled in such school if such minor (i) expresses to any individual who is employed in such school that such minor is experiencing gender incongruence or (ii) requests that any such employee participate in (a) social affirmation of such minor's gender incongruence or (b) the transition of such minor to a sex or gender different from the minor's biological sex while at school.

C. Each public elementary or secondary school principal or his designee shall request and receive permission from at least one parent of a minor student enrolled at such school prior to the implementation at such school of any plan concerning any gender incongruence experienced by such minor, including any counseling of such minor at school. Any such plan shall include provision for parental participation to the extent requested by the parent.

§ 63.2-100. Definitions.

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

"Abused or neglected child" means any child less than 18 years of age:

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. *Further, in no event shall referring to and raising the child in a manner consistent with the child's biological sex, including related mental health or medical decisions, be considered abuse or neglect.* 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

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59 as to endanger the health or safety of the child. Such independent activities include traveling to or from
60 school or nearby locations by bicycle or on foot, playing outdoors, or remaining at home for a
61 reasonable period of time. Nothing in this subdivision shall be construed to limit the provisions of
62 § 16.1-278.4;

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

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

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

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

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

78 If a civil proceeding under this title is based solely on the parent having left the child at a hospital
79 or emergency medical services agency, it shall be an affirmative defense that such parent safely
80 delivered the child within 30 days of the child's birth to (i) a hospital that provides 24-hour emergency
81 services, (ii) an attended emergency medical services agency that employs emergency medical services
82 providers, or (iii) a newborn safety device located at and operated by such hospital or emergency
83 medical services agency. For purposes of terminating parental rights pursuant to § 16.1-283 and
84 placement for adoption, the court may find such a child is a neglected child upon the ground of
85 abandonment.

86 "Adoptive home" means any family home selected and approved by a parent, local board or a
87 licensed child-placing agency for the placement of a child with the intent of adoption.

88 "Adoptive placement" means arranging for the care of a child who is in the custody of a
89 child-placing agency in an approved home for the purpose of adoption.

90 "Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable
91 confinement of an adult as defined in § 63.2-1603.

92 "Adult day care center" means any facility that is either operated for profit or that desires licensure
93 and that provides supplementary care and protection during only a part of the day to four or more adults
94 who are aged or infirm or who have disabilities and who reside elsewhere, except (i) a facility or
95 portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and
96 Developmental Services, and (ii) the home or residence of an individual who cares for only persons
97 related to him by blood or marriage. Included in this definition are any two or more places,
98 establishments or institutions owned, operated or controlled by a single entity and providing such
99 supplementary care and protection to a combined total of four or more adults who are aged or infirm or
100 who have disabilities.

101 "Adult exploitation" means the illegal, unauthorized, improper, or fraudulent use of an adult as
102 defined in § 63.2-1603 or his funds, property, benefits, resources, or other assets for another's profit,
103 benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the
104 adult of his rightful use of or access to such funds, property, benefits, resources, or other assets. "Adult
105 exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or
106 an intentional failure to use the financial resources of an adult in a manner that results in neglect of
107 such adult; (ii) the acquisition, possession, or control of an adult's financial resources or property
108 through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for
109 goods or services or perform services against his will for another's profit, benefit, or advantage if the
110 adult did not agree, or was tricked, misled, or defrauded into agreeing, to pay for such goods or services
111 or to perform such services.

112 "Adult foster care" means room and board, supervision, and special services to an adult who has a
113 physical or mental condition. Adult foster care may be provided by a single provider for up to three
114 adults. "Adult foster care" does not include services or support provided to individuals through the
115 Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9.

116 "Adult neglect" means that an adult as defined in § 63.2-1603 is living under such circumstances
117 that he is not able to provide for himself or is not being provided services necessary to maintain his
118 physical and mental health and that the failure to receive such necessary services impairs or threatens to
119 impair his well-being. However, no adult shall be considered neglected solely on the basis that such
120 adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical

care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is a written or oral expression of consent by that adult.

"Adult protective services" means services provided by the local department that are necessary to protect an adult as defined in § 63.2-1603 from abuse, neglect or exploitation.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least a moderate level of assistance with activities of daily living.

"Assisted living facility" means any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged or infirm or who have disabilities and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving individuals who are infirm or who have disabilities between the ages of 18 and 21, or 22 if enrolled in an educational program for individuals with disabilities pursuant to § 22.1-214, when such facility is licensed by the Department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.), but including any portion of the facility not so licensed; and (iv) any housing project for individuals who are 62 years of age or older or individuals with disabilities that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more adults who are aged or infirm or who have disabilities. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an individual who is aged or infirm or who has a disability.

"Auxiliary grants" means cash payments made to certain aged, blind or disabled individuals who receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive these benefits except for excess income.

"Birth family" or "birth sibling" means the child's biological family or biological sibling.

"Birth parent" means the child's biological parent and, for purposes of adoptive placement, means parent(s) by previous adoption.

"Board" means the State Board of Social Services.

"Child" means any natural person who is (i) under 18 years of age or (ii) for purposes of the Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9, under 21 years of age and meets the eligibility criteria set forth in § 63.2-919.

"Child-placing agency" means (i) any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to § 63.2-1819, (ii) a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221, or (iii) an entity that assists parents with the process of delegating parental and legal custodial powers of their children pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20. "Child-placing agency" does not include the persons to whom such parental or legal custodial powers are delegated pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child-protective services" means the identification, receipt and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child support services" means any civil, criminal or administrative action taken by the Division of Child Support Enforcement to locate parents; establish paternity; and establish, modify, enforce, or collect child support, or child and spousal support.

"Child-welfare agency" means a child-placing agency, children's residential facility, or independent foster home.

"Children's residential facility" means any facility, child-caring institution, or group home that is maintained for the purpose of receiving children separated from their parents or guardians for full-time care, maintenance, protection and guidance, or for the purpose of providing independent living services to persons between 18 and 21 years of age who are in the process of transitioning out of foster care. Children's residential facility shall not include:

1. A licensed or accredited educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer

182 vacation;

183 2. An establishment required to be licensed as a summer camp by § 35.1-18; and

184 3. A licensed or accredited hospital legally maintained as such.

185 "Commissioner" means the Commissioner of the Department, his designee or authorized
186 representative.

187 "Department" means the State Department of Social Services.

188 "Department of Health and Human Services" means the Department of Health and Human Services
189 of the United States government or any department or agency thereof that may hereafter be designated
190 as the agency to administer the Social Security Act, as amended.

191 "Disposable income" means that part of the income due and payable of any individual remaining
192 after the deduction of any amount required by law to be withheld.

193 "Energy assistance" means benefits to assist low-income households with their home heating and
194 cooling needs, including, but not limited to, purchase of materials or substances used for home heating,
195 repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or
196 repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance
197 with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the
198 Low-Income Home Energy Assistance Act of 1981 (Title XXVI of P.L. 97-35), as amended.

199 "Family and permanency team" means the group of individuals assembled by the local department to
200 assist with determining planning and placement options for a child, which shall include, as appropriate,
201 all biological relatives and fictive kin of the child, as well as any professionals who have served as a
202 resource to the child or his family, such as teachers, medical or mental health providers, and clergy
203 members. In the case of a child who is 14 years of age or older, the family and permanency team shall
204 also include any members of the child's case planning team that were selected by the child in
205 accordance with subsection A of § 16.1-281.

206 "Federal-Funded Kinship Guardianship Assistance program" means a program consistent with 42
207 U.S.C. § 673 that provides, subject to a kinship guardianship assistance agreement developed in
208 accordance with § 63.2-1305, payments to eligible individuals who have received custody of a child of
209 whom they had been the foster parents.

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

212 "Foster care placement" means placement of a child through (i) an agreement between the parents or
213 guardians and the local board where legal custody remains with the parents or guardians or (ii) an
214 entrustment or commitment of the child to the local board or licensed child-placing agency. "Foster care
215 placement" does not include placement of a child in accordance with a power of attorney pursuant to
216 Chapter 10 (§ 20-166 et seq.) of Title 20.

217 "Foster home" means a residence approved by a child-placing agency or local board in which any
218 child, other than a child by birth or adoption of such person or a child who is the subject of a power of
219 attorney to delegate parental or legal custodial powers by his parents or legal custodian to the natural
220 person who has been designated the child's legal guardian pursuant to Chapter 10 (§ 20-166 et seq.) of
221 Title 20 and who exercises legal authority over the child on a continuous basis for at least 24 hours
222 without compensation, resides as a member of the household.

223 "General relief" means money payments and other forms of relief made to those persons mentioned
224 in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with §
225 63.2-401.

226 "Independent foster home" means a private family home in which any child, other than a child by
227 birth or adoption of such person, resides as a member of the household and has been placed therein
228 independently of a child-placing agency except (i) a home in which are received only children related by
229 birth or adoption of the person who maintains such home and children of personal friends of such
230 person; (ii) a home in which is received a child or children committed under the provisions of
231 subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8; and
232 (iii) a home in which are received only children who are the subject of a properly executed power of
233 attorney pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20.

234 "Independent living" means a planned program of services designed to assist a child age 16 and over
235 and persons who are former foster care children or were formerly committed to the Department of
236 Juvenile Justice and are between the ages of 18 and 21 in transitioning to self-sufficiency.

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

243 "Independent living services" means services and activities provided to a child in foster care 14 years

of age or older who was 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. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the residence.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Kinship care" means the full-time care, nurturing, and protection of children by relatives.

"Kinship guardian" means the adult relative of a child in a kinship guardianship established in accordance with § 63.2-1305 or 63.2-1306 who has been awarded custody of the child by the court after acting as the child's foster parent.

"Kinship guardianship" means a relationship established in accordance with § 63.2-1305 or 63.2-1306 between a child and an adult relative of the child who has formerly acted as the child's foster parent that is intended to be permanent and self-sustaining as evidenced by the transfer by the court to the adult relative of the child of the authority necessary to ensure the protection, education, care and control, and custody of the child and the authority for decision making for the child.

"Local board" means the local board of social services representing one or more counties or cities.

"Local department" means the local department of social services of any county or city in the Commonwealth.

"Local director" means the director or his designated representative of the local department of the city or county.

"Merit system plan" means those regulations adopted by the Board in the development and operation of a system of personnel administration meeting requirements of the federal Office of Personnel Management.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to the aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services; child care; and general relief.

"Qualified assessor" means an entity contracting with the Department of Medical Assistance Services to perform nursing facility pre-admission screening or to complete the uniform assessment instrument for a home and community-based waiver program, including an independent physician contracting with the Department of Medical Assistance Services to complete the uniform assessment instrument for residents of assisted living facilities, or any hospital that has contracted with the Department of Medical Assistance Services to perform nursing facility pre-admission screenings.

"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.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. The definition of "residential living care" includes the services provided by independent living facilities that voluntarily become licensed.

"Sibling" means each of two or more children having one or more parents in common.

"Social services" means foster care, adoption, adoption assistance, child-protective services, domestic violence services, or any other services program implemented in accordance with regulations adopted by the Board. Social services also includes adult services pursuant to Article 4 (§ 51.5-144 et seq.) of Chapter 14 of Title 51.5 and adult protective services pursuant to Article 5 (§ 51.5-148) of Chapter 14 of Title 51.5 provided by local departments of social services in accordance with regulations and under the supervision of the Commissioner for Aging and Rehabilitative Services.

"Special order" means an order imposing an administrative sanction issued to any party licensed pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A special order shall be considered a case decision as defined in § 2.2-4001.

"State-Funded Kinship Guardianship Assistance program" means a program that provides payments to eligible individuals who have received custody of a relative child subject to a kinship guardianship assistance agreement developed in accordance with § 63.2-1306.

"Supervised independent living setting" means the residence of a person 18 years of age or older who is participating in the Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9 where supervision includes a monthly visit with a service worker or, when appropriate, contracted supervision. "Supervised independent living setting" does not include residential facilities or group homes.

"Temporary Assistance for Needy Families" or "TANF" means the program administered by the Department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the Temporary Assistance for Needy Families program for families in which both natural or adoptive parents of a child reside in the home and neither parent is exempt from Virginia Initiative for Education and Work (VIEW) participation under § 63.2-609.

"Title IV-E Foster Care" means a federal program authorized under §§ 472 and 473 of the Social Security Act, as amended, and administered by the Department through which foster care is provided on behalf of qualifying children.