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HOUSE BILL NO. 1039

Offered January 25, 1994

A BILL to amend and reenact § 16.1-228 of the Code of Virginia, as it is currently effective and as it may become effective, relating to abuse or neglect of a child.

Patrons—Hamilton, Behm, Cox, Crouch, Diamonstein, Fisher, Katzen and Wagner; Senators: Norment and Stolle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-228 of the Code of Virginia, as it is currently effective and as it may become effective, is amended and reenacted as follows:

§ 16.1-228. (For effective date - See note) Definitions.

When used in this chapter, unless the context otherwise requires:

"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;

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;

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

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

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 commits or knowingly allows to be committed a violation of § 18.2-266 while the child is in the vehicle driven by the violator.

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

"Adult" means a person eighteen years of age or older.

"Child," "juvenile" or "minor" means a person less than eighteen years of age.

"Child welfare agency" means a child-placing agency, child-caring institution or independent foster home as defined in § 63.1-195.

"Child in need of services" means a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child; 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 a child in need of services, nor shall any child who habitually remains away from or habitually deserts or abandons his family as a result of what the court or the local child protective services unit determines to be incidents of physical, emotional or sexual abuse in the home be considered a child in need of services for that reason alone.

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

"Child in need of supervision" means:

1. A child who, while subject to compulsory school attendance, is habitually and without justification absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of any and all educational services and programs that are required to be provided by law and which meet the child's particular educational needs, and (ii) the school system from which the child is absent or other appropriate agency has made a reasonable effort to effect the child's regular attendance without success; or

2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or

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60 placement authority, remains away from or habitually deserts or abandons his family or lawful custodian
61 or escapes or remains away without proper authority from a residential care facility in which he has
62 been placed by the court, and (i) such conduct presents a clear and substantial danger to the child's life
63 or health, (ii) the child or his family is in need of treatment, rehabilitation or services not presently
64 being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation
65 or services needed by the child or his family.

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

68 "Delinquent act" means (i) an act designated a crime under the law of this Commonwealth, or an
69 ordinance of any city, county, town or service district, or under federal law, (ii) a violation of
70 § 18.2-308.7 or (iii) a violation of a court order as provided for in § 16.1-292, but shall not include an
71 act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a crime only if
72 committed by a child. For purposes of §§ 16.1-241 and 16.1-278.9, the term shall include a refusal to
73 take a blood or breath test in violation of § 18.2-268.2 or a similar ordinance of any county, city or
74 town.

75 "Delinquent child" means a child who has committed a delinquent act or an adult who has committed
76 a delinquent act prior to his eighteenth birthday.

77 "Department" means the Department of Youth and Family Services and "Director" means the
78 administrative head in charge thereof or such of his assistants and subordinates as are designated by him
79 to discharge the duties imposed upon him under this law.

80 "Family abuse" means any act of violence, including any forceful detention, which results in physical
81 injury or places one in reasonable apprehension of serious bodily injury and which is committed by a
82 person against such person's family or household member.

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

92 "Foster care" or "temporary foster care" means the provision of services or substitute care and
93 supervision, for a child identified as needing services to prevent or eliminate the need for foster care
94 placement or who has been committed or entrusted to a local board of public welfare or child welfare
95 agency or for whom the board or child welfare agency has accepted supervision, in a temporary living
96 situation until the child can return to his family or be placed in a permanent foster care placement or in
97 an adoptive home.

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

100 "Jail" or "other facility designed for the detention of adults" means a local or regional correctional
101 facility as defined in § 53.1-1, except those facilities utilized on a temporary basis as a court holding
102 cell for a child incident to a court hearing or as a temporary lock-up room or ward incident to the
103 transfer of a child to a juvenile facility.

104 "The judge" means the judge or the substitute judge of the juvenile and domestic relations district
105 court of each county or city.

106 "This law" or "the law" means the Juvenile and Domestic Relations District Court Law embraced in
107 this chapter.

108 "Legal custody" means (i) a legal status created by court order which vests in a custodian the right to
109 have physical custody of the child, to determine and redetermine where and with whom he shall live,
110 the right and duty to protect, train and discipline him and to provide him with food, shelter, education
111 and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal
112 status created by court order of joint custody as defined in § 20-107.2.

113 "Permanent foster care placement" means the place of residence in which a child resides and in
114 which he has been placed pursuant to the provisions of §§ 63.1-56 and 63.1-206.1 with the expectation
115 and agreement between the placing agency and the place of permanent foster care that the child shall
116 remain in the placement until he reaches the age of majority unless modified by court order or unless
117 removed pursuant to § 16.1-251 or § 63.1-248.9. A permanent foster care placement may be a place of
118 residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term
119 basis.

120 "Secure facility" or "detention home" means a local or regional public or private locked residential
121 facility which 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 Youth and Family Services.

"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.

"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.

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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.

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2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or placement authority, remains away from or habitually deserts or abandons his family or lawful custodian or escapes or remains away without proper authority from a residential care facility in which he has been placed by the court, and (i) such conduct presents a clear and substantial danger to the child's life or health, (ii) the child or his family is in need of treatment, rehabilitation or services not presently

being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

"The court" or the "family court" means the family court of each county or city.

"Delinquent act" means (i) an act designated a crime under the law of this Commonwealth, or an ordinance of any city, county, town or service district, or under federal law, (ii) a violation of § 18.2-308.7 or (iii) a violation of a court order as provided for in § 16.1-292, but shall not include an act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a crime only if committed by a child. For purposes of §§ 16.1-241 and 16.1-278.9, the term shall include a refusal to take a blood or breath test in violation of § 18.2-268.2 or a similar ordinance of any county, city or town.

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"Department" means the Department of Youth and Family Services and "Director" means the administrative head 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.

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"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, grandparents and grandchildren who 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 twelve months, cohabited with the person, and any children of either of them residing in the same home with the person.

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"The judge" means the judge or the substitute judge of the family court of each county or city.

"This law" or "the law" means the Family Court Law embraced in this chapter.

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"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 §§ 63.1-56 and 63.1-206.1 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 § 63.1-248.9. 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.

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