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## HOUSE BILL NO. 1801

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on February 7, 1999)

(Patron Prior to Substitute—Delegate McDonnell)

*A BILL to amend and reenact §§ 16.1-228, 16.1-241, 18.2-57.2 and 19.2-81.3 of the Code of Virginia, relating to family or household member; penalty.*

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

**1. That §§ 16.1-228, 16.1-241, 18.2-57.2 and 19.2-81.3 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-228. 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.

"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.

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

"Boot camp" means a ~~short term~~ *short-term* secure or nonsecure juvenile residential facility with highly structured components, including, but not limited to, ~~military style~~ *military-style* drill and ceremony, physical labor, education and rigid discipline, and no less than six months of intensive aftercare.

"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

60 success; or

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

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

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

77 "Delinquent child" means a child who has committed a delinquent act or an adult who has committed  
78 a delinquent act prior to his eighteenth birthday, except where the jurisdiction of the juvenile court has  
79 been terminated under the provisions of § 16.1-269.6.

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

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

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

96 "Foster care services" means the provision of a full range of casework, treatment and community  
97 services for a planned period of time to a child who is abused or neglected as defined in § 63.1-248.2,  
98 or in need of services as defined in this section, and his family when the child (i) has been identified as  
99 needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through  
100 an agreement between the local board of social services or a public agency designated by the  
101 community policy and management team and the parents or guardians where legal custody remains with  
102 the parents or guardians, (iii) has been committed or entrusted to a local board of social services or  
103 child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board  
104 pursuant to § 16.1-293.

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

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

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

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

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

120 "Permanent foster care placement" means the place of residence in which a child resides and in  
121 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.

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

"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.

"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 fourteen years of age or older.

§ 16.1-241. Jurisdiction.

The judges of the juvenile and domestic relations district court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county, over all cases, matters and proceedings involving:

A. The custody, visitation, support, control or disposition of a child:

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent except where the jurisdiction of the juvenile court has been terminated or divested;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

3. Whose custody, visitation or support is a subject of controversy or requires determination. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, except as provided in § 16.1-244;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or whose parent or parents for good cause desire to be relieved of his care and custody;

5. Where the termination of residual parental rights and responsibilities is sought. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in § 16.1-244; and

6. Who is charged with a traffic infraction as defined in § 46.2-100.

In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was fourteen years of age or older at the time of the commission of the alleged offense, and any matters related thereto. In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was fourteen years of age or older at the time of the commission of the alleged offense, and any matters related thereto. A determination by the juvenile court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § 16.1-269.6.

183 In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a  
184 violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a  
185 lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be  
186 divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

187 The authority of the juvenile court to adjudicate matters involving the custody, visitation, support,  
188 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,  
189 father or legal guardian but shall include petitions filed at any time by any party with a legitimate  
190 interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not  
191 be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party  
192 with a legitimate interest shall not include any person (i) whose parental rights have been terminated by  
193 court order, either voluntarily or involuntarily, or any other person whose interest in the child derives  
194 from or through such person whose parental rights have been so terminated, including, but not limited  
195 to, grandparents, stepparents, former stepparents, blood relatives and family members, if the child  
196 subsequently has been legally adopted, except where a final order of adoption is entered pursuant to  
197 § 63.1-231, or (ii) who has been convicted of a violation of subsection A of § 18.2-61 or subsection B  
198 of § 18.2-366 when the child who is the subject of the petition was conceived as a result of such  
199 violation. The authority of the juvenile court to consider a petition involving the custody of a child shall  
200 not be proscribed or limited where the child has previously been awarded to the custody of a local  
201 board of social services.

202 B. The admission of minors for inpatient treatment in a mental health facility in accordance with the  
203 provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the commitment of a mentally ill person  
204 or judicial certification of eligibility for admission to a treatment facility of a mentally retarded person  
205 in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1.  
206 Jurisdiction of the commitment and certification of adults shall be concurrent with the general district  
207 court.

208 C. Except as provided in subsections D and H hereof, judicial consent to such activities as may  
209 require parental consent may be given for a child who has been separated from his parents, guardian,  
210 legal custodian or other person standing in loco parentis and is in the custody of the court when such  
211 consent is required by law.

212 D. Judicial consent for emergency surgical or medical treatment for a child who is neither married  
213 nor has ever been married, when the consent of his parent, guardian, legal custodian or other person  
214 standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person  
215 standing in loco parentis (i) is not a resident of this Commonwealth, (ii) ~~his whereabouts~~ *is of unknown*  
216 *whereabouts*, (iii) ~~he~~ cannot be consulted with promptness, reasonable under the circumstances or (iv)  
217 fails to give such consent or provide such treatment when requested by the judge to do so.

218 E. Any person charged with deserting, abandoning or failing to provide support for any person in  
219 violation of law.

220 F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

221 1. Who has been abused or neglected;

222 2. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204  
223 or is otherwise before the court pursuant to subdivision A 4 of this section; *or*

224 3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court  
225 finds that such person has by overt act or omission induced, caused, encouraged or contributed to the  
226 conduct of the child complained of in the petition.

227 G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other  
228 person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services  
229 which are required by law to be provided for that child or such child's parent, guardian, legal custodian  
230 or other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not  
231 exclusive of that of courts having equity jurisdiction as provided in § 16.1-244.

232 H. Judicial consent to apply for a work permit for a child when such child is separated from his  
233 parents, legal guardian or other person standing in loco parentis.

234 I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or  
235 neglect of children or with any violation of law which causes or tends to cause a child to come within  
236 the purview of this law, or with any other offense against the person of a child. In prosecution for  
237 felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not  
238 there is probable cause.

239 J. All offenses in which one family or household member is charged with an offense in which  
240 another family or household member is the victim and all offenses under § 18.2-49.1.

241 In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to  
242 determining whether or not there is probable cause. Any objection based on jurisdiction under this  
243 subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial,  
244 before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it

shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for challenging directly or collaterally the jurisdiction of the court in which the case is tried. For purposes of this subsection, "family or household member," as defined in § 16.1-228, shall also be construed to include ~~parent and child, stepparent and stepchild,~~ brothers and sisters, and grandparent and grandchild, regardless of whether such persons reside in the same home.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such parental rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive parents.

L. Any person who seeks spousal support after having separated from his spouse. A decision under this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court. A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or § 16.1-279.1.

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Juvenile Justice.

O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.) of this chapter.

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the juvenile and domestic relations district court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

R. Petitions for the purpose of obtaining an emergency protective order pursuant to § 16.1-253.4.

S. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

T. Petitions to enforce any request for information or subpoena that is not complied with or to review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect pursuant to § 63.1-248.6:1.

U. Petitions filed in connection with parental placement adoption consent hearings, pursuant to § 63.1-220.3. Such proceedings shall be advanced on the docket so as to be heard by the court within ten days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

V. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion if a minor elects not to allow notice to an authorized person. After a hearing, a judge may authorize a physician to perform an abortion upon finding that the minor is mature and capable of giving informed consent to the proposed abortion. If the judge determines that the minor is not mature, the judge shall, after a hearing, determine whether the performance of an abortion upon the minor without notice to an authorized person would be in the minor's best interest, and if the court finds that the abortion would be in the minor's best interest, it shall so authorize a physician.

The minor may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and shall, upon her request, appoint counsel for her.

Court proceedings under this subsection shall be confidential and shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay in order to serve the best interests of the minor. Court proceedings under this subsection shall be heard as soon as practicable but in no event later than four days after the petition is filed.

Notwithstanding any other provision of law, an expedited confidential appeal to the circuit court shall be available to any minor for whom the court denies an order authorizing an abortion without notice. Any such appeal shall be heard and decided no later than five days after the appeal is filed. An order authorizing an abortion without notification shall not be subject to appeal.

No filing fees shall be required of the minor at trial or upon appeal.

If either the original court or the circuit court fails to act within the time periods required by this subsection, the court before which the proceeding is pending shall immediately authorize a physician to perform the abortion without notice to an authorized person.

A physician shall not knowingly perform an abortion upon an unemancipated minor unless notice has been given or the minor delivers to the physician a court order entered pursuant to this section. However, neither notice nor judicial authorization shall be required if the minor declares that she is abused or neglected and the attending physician has reason to suspect that the minor may be an abused or neglected child as defined in § 63.1-248.2 and reports the suspected abuse or neglect in accordance with § 63.1-248.3; or if, in the attending physician's good faith medical judgment, (i) the abortion is medically necessary immediately to avert the minor's death or (ii) there is insufficient time to provide

306 the required notice or judicial authorization because a delay would create a serious risk of substantial  
307 impairment of a major bodily function or substantial physical injury. The attending physician shall  
308 certify the facts justifying the exception in the minor's medical record.

309 For purposes of this subsection:

310 "Authorized person" means: (i) a parent or duly appointed legal guardian or custodian of the minor  
311 or (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling,  
312 with whom the minor regularly and customarily resides and who has care and control of the minor.

313 "Notice" means that (i) the physician or his agent has given actual notice of his intention to perform  
314 such abortion to an authorized person, either in person or by telephone, at least twenty-four hours  
315 previous to the performance of the abortion; or (ii) the physician or his agent, after a reasonable effort  
316 to notify an authorized person, has mailed notice to an authorized person by certified mail, addressed to  
317 such person at his usual place of abode, with return receipt requested, at least seventy-two hours prior to  
318 the performance of the abortion; or (iii) at least one authorized person is present with the minor seeking  
319 the abortion; or (iv) the minor has delivered to the physician a written statement signed by an authorized  
320 person and witnessed by a competent adult that the authorized person knows of the minor's intent to  
321 have an abortion.

322 "Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical  
323 procedure or to induce a miscarriage as provided in §§ 18.2-72, 18.2-73 or § 18.2-74.

324 "Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid  
325 marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any  
326 of the armed forces of the United States; (iii) willingly living separate and apart from his or her parents  
327 or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an order of  
328 emancipation pursuant to Article 15 (§ 16.1-331 et seq.) of Chapter 11 of Title 16.1.

329 W. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) of Chapter 11 of Title 16.1 relating to  
330 standby guardians for minor children.

331 The ages specified in this law refer to the age of the child at the time of the acts complained of in  
332 the petition.

333 Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of  
334 any process in a proceeding pursuant to subdivision 3 of subsection A or subsection B, D, M or R of  
335 this section.

336 Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of  
337 subsection V shall be guilty of a Class 3 misdemeanor.

338 § 18.2-57.2. Assault and battery against a family or household member.

339 A. Any person who commits an assault and battery against a family or household member shall be  
340 guilty of a Class 1 misdemeanor.

341 B. On a third or subsequent conviction for assault and battery against a family or household member,  
342 where it is alleged in the warrant, information, or indictment on which a person is convicted, that (i)  
343 such person has been previously convicted twice of assault and battery against a family or household  
344 member, or of a similar offense under the law of any other jurisdiction, within ten years of the third or  
345 subsequent offense, and that (ii) each such assault and battery occurred on different dates, such person  
346 shall be guilty of a Class 6 felony.

347 C. Whenever a warrant for a violation of this section is issued, the magistrate shall issue an  
348 emergency protective order as authorized by § 16.1-253.4.

349 D. ~~As used in this section, The definition of "family or household member" means~~ (i) the defendant's  
350 spouse, whether or not he or she resides in the same home with the defendant; (ii) the defendant's  
351 former spouse, whether or not he or she resides in the same home with the defendant; (iii) the  
352 defendant's parents, stepparents, children, stepchildren, brothers and sisters, grandparents and  
353 grandchildren who reside in the same home with the defendant; (iv) the defendant's mother-in-law,  
354 father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same  
355 home with the defendant; (v) any person who has a child in common with the defendant, whether or not  
356 the defendant and that person have been married or have resided together at any time; or (vi) any  
357 individual who cohabits or who, within the previous twelve months, cohabited with the defendant, and  
358 any children of either of them then residing in the same home with the defendant *in § 16.1-228 applies*  
359 *to this section.*

360 § 19.2-81.3. Arrest without a warrant authorized in cases of assault and battery against a family or  
361 household member and stalking and for violations of protective orders; procedure, etc.

362 A. Any law-enforcement officer, as defined in § 19.2-81, may arrest without a warrant for an alleged  
363 violation of §§ 18.2-57.2, 18.2-60.4 or § 16.1-253.2 regardless of whether such violation was committed  
364 in his presence, if such arrest is based on probable cause or upon personal observations or the  
365 reasonable complaint of a person who observed the alleged offense or upon personal investigation.

366 B. A law-enforcement officer having probable cause to believe that a violation of § 18.2-57.2 or  
367 § 16.1-253.2 has occurred shall arrest and take into custody the person he has probable cause to believe,

368 based on the totality of the circumstances, was the primary physical aggressor unless there are special  
369 circumstances which would dictate a course of action other than an arrest.

370 C. Regardless of whether an arrest is made, the officer shall file a written report with his department  
371 of any incident in which he has probable cause to believe family abuse has occurred, including, where  
372 required, a statement in writing that there are special circumstances which would dictate a course of  
373 action other than an arrest. Upon request of the allegedly abused person, the department shall make a  
374 summary of the report available to the allegedly abused person. The officer shall also provide the  
375 allegedly abused person, both orally and in writing, information regarding the legal and community  
376 resources available to the allegedly abused person.

377 D. In every case in which a law-enforcement officer makes an arrest under this section, he shall  
378 petition for an emergency protective order as authorized in § 16.1-253.4 when the person arrested and  
379 taken into custody is brought before the magistrate. Regardless of whether an arrest is made, if the  
380 officer has probable cause to believe that a danger of acts of family abuse exists, the law-enforcement  
381 officer shall seek an emergency protective order under § 16.1-253.4.

382 E. A law-enforcement officer investigating any complaint of family abuse, including but not limited  
383 to assault and battery against a family or household member may, upon request, transport, or arrange for  
384 the transportation of an abused person to a hospital, safe shelter, or magistrate. Any local  
385 law-enforcement agency may adopt a policy requiring an officer to transport or arrange for  
386 transportation of an abused person as provided in this subsection.

387 F. As used in this section, *The definition of "family or household member" means (i) the person's*  
388 *spouse, whether or not he or she resides in the same home with the person; (ii) the person's former*  
389 *spouse, whether or not he or she resides in the same home with the person; (iii) the person's parents,*  
390 *stepparents, children, stepchildren, brothers and sisters, grandparents and grandchildren who reside in the*  
391 *same home with the person; (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law,*  
392 *brothers-in-law and sisters-in-law who reside in the same home with the person; (v) any person who has*  
393 *a child in common with the defendant, whether or not the person and that person have been married or*  
394 *have resided together at any time; or (vi) any individual who cohabits or who, within the previous*  
395 *twelve months, cohabited with the person, and any children of either of them then residing in the same*  
396 *home with the defendant in § 16.1-228 applies to this section.*

397 G. As used in this section, a "law-enforcement officer" means (i) any full-time or part-time employee  
398 of a police department or sheriff's office which is part of or administered by the Commonwealth or any  
399 political subdivision thereof and who is responsible for the prevention and detection of crime and the  
400 enforcement of the penal, traffic or highway laws of this Commonwealth and (ii) any member of an  
401 auxiliary police force established pursuant to subsection B of § 15.2-1731. Part-time employees are  
402 compensated officers who are not full-time employees as defined by the employing police department or  
403 sheriff's office.

404 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**  
405 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**  
406 **is \$0 in FY 2009.**