

22101278D

HOUSE BILL NO. 475

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact §§ 16.1-228 and 19.2-152.7:1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 16.1-279.2, relating to protective orders; petition; human trafficking and sex trafficking; penalty.

Patron—Murphy

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-228 and 19.2-152.7:1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 16.1-279.2 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. 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 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 delivered the child to a hospital that provides 24-hour emergency services or to an attended emergency medical services agency that employs emergency medical services personnel, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

"Adoptive home" means the place of residence of any natural person in which a child resides as a

INTRODUCED

HB475

59 member of the household and in which he has been placed for the purposes of adoption or in which he
60 has been legally adopted by another member of the household.

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

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

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

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

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

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

85 "Child in need of supervision" means:

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

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

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

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

104 "Delinquent act" means (i) an act designated a crime under the law of the Commonwealth, or an
105 ordinance of any city, county, town, or service district, or under federal law, (ii) a violation of
106 § 18.2-308.7, or (iii) a violation of a court order as provided for in § 16.1-292, but does not include an
107 act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a crime only if
108 committed by a child.

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

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

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

118 "Family abuse" means any act involving violence, force, or threat that results in bodily injury or
119 places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by
120 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 acts in furtherance of human trafficking or commercial sex trafficking in violation of § 18.2-355 or 18.2-357.1, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.

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

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

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

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

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

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

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

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

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

"Legal custody" means (i) a legal status created by court order which vests in a custodian the right to 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

182 and agreement between the placing agency and the place of permanent foster care that the child shall
183 remain in the placement until he reaches the age of majority unless modified by court order or unless
184 removed pursuant to § 16.1-251 or 63.2-1517. A permanent foster care placement may be a place of
185 residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term
186 basis.

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

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

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

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

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

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

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

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

229 "Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of
230 § 16.1-269.1 when committed by a juvenile 14 years of age or older.

231 **§ 16.1-279.2. Protective orders; minor may petition.**

232 *Notwithstanding § 8.01-8 or any other provision of law, a minor may petition for a protective order*
233 *pursuant to this title or Chapter 9.1 (§ 19.2-152.7:1 et seq.) of Title 19.2 (i) without doing so by next*
234 *friend and (ii) with or without the consent of a parent, legal guardian, or other person standing in loco*
235 *parentis to the minor and who has care and control of the minor.*

236 *In any matter where a minor has petitioned for a protective order (a) without doing so by next*
237 *friend and (b) without the consent of a parent, legal guardian, or other person standing in loco parentis*
238 *to the minor and who has care and control of the minor, the court may appoint a guardian ad litem for*
239 *the minor.*

240 **§ 19.2-152.7:1. Definitions.**

241 As used in this chapter:

242 "Act of violence, force, or threat" means any act involving violence, force, or threat that results in
243 bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury. Such

244 act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of
245 Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, *or acts in furtherance of human trafficking or*
246 *commercial sex trafficking in violation of § 18.2-355 or 18.2-357.1*, or any criminal offense that results
247 in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.
248 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
249 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
250 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
251 **correctional facilities; therefore, Chapter 552 of the Acts of Assembly of 2021, Special Session I,**
252 **requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of**
253 **\$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
254 **appropriation cannot be determined for periods of commitment to the custody of the Department**
255 **of Juvenile Justice.**