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SENATE BILL NO. 63

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on January 24, 2022)

(Patrons Prior to Substitute—Senators Ruff and Peake [SB 175])

*A BILL to amend and reenact §§ 8.01-226.5:2, 16.1-228, 18.2-371, 18.2-371.1, 40.1-103, and 63.2-100 of the Code of Virginia, relating to save haven protections; newborn safety device.***Be it enacted by the General Assembly of Virginia:****1. That §§ 8.01-226.5:2, 16.1-228, 18.2-371, 18.2-371.1, 40.1-103, and 63.2-100 of the Code of Virginia are amended and reenacted as follows:****§ 8.01-226.5:2. Immunity of hospital and emergency medical services agency personnel for the acceptance of certain infants.**

Any personnel of a hospital or emergency medical services agency receiving a child under the circumstances described in the second paragraph of § 18.2-371, subdivision B 2 of § 18.2-371.1, or subsection B of § 40.1-103 shall be immune from civil liability or criminal prosecution for injury or other damage to the child unless such injury or other damage is the result of gross negligence or willful misconduct by such personnel. *Any hospital or emergency medical services agency that voluntarily installs a newborn safety device for the reception of children shall ensure that (i) the device is located inside the hospital or emergency medical services agency in an area that is conspicuous and visible to employees or personnel, (ii) the device is staffed 24 hours a day by a health care provider or emergency medical services personnel, (iii) the device is climate controlled and serves as a safe sleep environment for an infant, (iv) the device is equipped with a dual alarm system that sounds 60 seconds after a child is placed in the device and automatically places a call to 911 if the alarm is not deactivated within 60 seconds from within the hospital or emergency medical services agency, (v) the dual alarm system is visually checked at least two times per day and tested at least one time per week to ensure the alarm system is in working order, (vi) the device automatically locks when a child is placed in the device, and (vii) the device is identifiable by appropriate signage that shall include written and pictorial operational instructions.*

§ 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

60 mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as
61 defined in § 55.1-2000, with a person to whom the child is not related by blood or marriage and who
62 the parent or other person responsible for his care knows has been convicted of an offense against a
63 minor for which registration is required as a Tier III offender pursuant to § 9.1-902; or

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

67 If a civil proceeding under this chapter is based solely on the parent having left the child at a
68 hospital or emergency medical services agency, it shall be an affirmative defense that such parent safely
69 delivered the child *within 30 days of the child's birth* to (i) a hospital that provides 24-hour emergency
70 services ~~or to~~, (ii) an attended emergency medical services agency that employs emergency medical
71 services personnel, ~~within 14 days of the child's birth~~ or (iii) *a newborn safety device located at and*
72 *operated by such hospital or emergency medical services agency*. For purposes of terminating parental
73 rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected
74 child upon the ground of abandonment.

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

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

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

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

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

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

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

102 "Child in need of supervision" means:

103 1. A child who, while subject to compulsory school attendance, is habitually and without justification
104 absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of
105 any and all educational services and programs that are required to be provided by law and which meet
106 the child's particular educational needs, (ii) the school system from which the child is absent or other
107 appropriate agency has made a reasonable effort to effect the child's regular attendance without success,
108 and (iii) the school system has provided documentation that it has complied with the provisions of
109 § 22.1-258; or

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

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

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

121 "Delinquent act" means (i) an act designated a crime under the law of the 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 does 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.

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

"Department" means the Department of Juvenile Justice 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.

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

"Family abuse" means any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person against such person's family or household member. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.

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

"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.

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

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

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

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

196 "Permanent foster care placement" means the place of residence in which a child resides and in
197 which he has been placed pursuant to the provisions of §§ 63.2-900 and 63.2-908 with the expectation
198 and agreement between the placing agency and the place of permanent foster care that the child shall
199 remain in the placement until he reaches the age of majority unless modified by court order or unless
200 removed pursuant to § 16.1-251 or 63.2-1517. A permanent foster care placement may be a place of
201 residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term
202 basis.

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

207 "Qualified residential treatment program" means a program that (i) provides 24-hour residential
208 placement services for children in foster care; (ii) has adopted a trauma-informed treatment model that
209 meets the clinical and other needs of children with serious emotional or behavioral disorders, including
210 any clinical or other needs identified through assessments conducted pursuant to clause (viii) of this
211 definition; (iii) employs registered or licensed nursing and other clinical staff who provide care, on site
212 and within the scope of their practice, and are available 24 hours a day, 7 days a week; (iv) conducts
213 outreach with the child's family members, including efforts to maintain connections between the child
214 and his siblings and other family; documents and maintains records of such outreach efforts; and
215 maintains contact information for any known biological family and fictive kin of the child; (v) whenever
216 appropriate and in the best interest of the child, facilitates participation by family members in the child's
217 treatment program before and after discharge and documents the manner in which such participation is
218 facilitated; (vi) provides discharge planning and family-based aftercare support for at least six months
219 after discharge; (vii) is licensed in accordance with 42 U.S.C. § 671(a)(10) and accredited by an
220 organization approved by the federal Secretary of Health and Human Services; and (viii) requires that
221 any child placed in the program receive an assessment within 30 days of such placement by a qualified
222 individual that (a) assesses the strengths and needs of the child using an age-appropriate, evidence-based,
223 validated, and functional assessment tool approved by the Commissioner of Social Services; (b)
224 identifies whether the needs of the child can be met through placement with a family member or in a
225 foster home or, if not, in a placement setting authorized by 42 U.S.C. § 672(k)(2), including a qualified
226 residential treatment program, that would provide the most effective and appropriate level of care for the
227 child in the least restrictive environment and be consistent with the short-term and long-term goals
228 established for the child in his foster care or permanency plan; (c) establishes a list of short-term and
229 long-term mental and behavioral health goals for the child; and (d) is documented in a written report to
230 be filed with the court prior to any hearing on the child's placement pursuant to § 16.1-281, 16.1-282,
231 16.1-282.1, or 16.1-282.2.

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

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

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

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

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

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

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

§ 18.2-371. Causing or encouraging acts rendering children delinquent, abused, etc.; penalty; abandoned infant.

Any person 18 years of age or older, including the parent of any child, who (i) willfully contributes to, encourages, or causes any act, omission, or condition that renders a child delinquent, in need of services, in need of supervision, or abused or neglected as defined in § 16.1-228 or (ii) engages in consensual sexual intercourse or anal intercourse with or performs cunnilingus, fellatio, or anilingus upon or by a child 15 or older not his spouse, child, or grandchild is guilty of a Class 1 misdemeanor. This section shall not be construed as repealing, modifying, or in any way affecting §§ 18.2-18, 18.2-19, 18.2-61, 18.2-63, and 18.2-347.

If the prosecution under this section is based solely on the accused parent having left the child at a hospital or emergency medical services agency, it shall be an affirmative defense to prosecution of a parent under this section that such parent safely delivered the child *within the first 30 days of the child's life* to (a) a hospital that provides 24-hour emergency services ~~or to~~, (b) an attended emergency medical services agency that employs emergency medical services personnel, ~~within the first 14 days of the child's life~~ or (c) a newborn safety device located at and operated by such hospital or emergency medical services agency. In order for the affirmative defense to apply, the child shall be delivered in a manner reasonably calculated to ensure the child's safety.

§ 18.2-371.1. Abuse and neglect of children; penalty; abandoned infant.

A. Any parent, guardian, or other person responsible for the care of a child under the age of 18 who by willful act or willful omission or refusal to provide any necessary care for the child's health causes or permits serious injury to the life or health of such child is guilty of a Class 4 felony. For purposes of this subsection, "serious injury" includes but is not limited to (i) disfigurement, (ii) a fracture, (iii) a severe burn or laceration, (iv) mutilation, (v) maiming, (vi) forced ingestion of dangerous substances, and (vii) life-threatening internal injuries. For purposes of this subsection, "willful act or willful omission" includes operating or engaging in the conduct of a child welfare agency as defined in § 63.2-100 without first obtaining a license such person knows is required by Subtitle IV (§ 63.2-1700 et seq.) of Title 63.2 or after such license has been revoked or has expired and not been renewed.

B. 1. Any parent, guardian, or other person responsible for the care of a child under the age of 18 whose willful act or omission in the care of such child was so gross, wanton, and culpable as to show a reckless disregard for human life is guilty of a Class 6 felony.

2. If a prosecution under this subsection is based solely on the accused parent having left the child at a hospital or emergency medical services agency, it shall be an affirmative defense to prosecution of a parent under this subsection that such parent safely delivered the child *within the first 30 days of the child's life* to (i) a hospital that provides 24-hour emergency services ~~or to~~, (ii) an attended emergency medical services agency that employs emergency medical services personnel, ~~within the first 14 days of the child's life~~ or (iii) a newborn safety device located at and operated by such hospital or emergency medical services agency. In order for the affirmative defense to apply, the child shall be delivered in a manner reasonably calculated to ensure the child's safety.

C. Any parent, guardian, or other person having care, custody, or control of a minor 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 not, for that reason alone, be considered in violation of this section.

§ 40.1-103. Cruelty and injuries to children; penalty; abandoned infant.

A. It shall be unlawful for any person employing or having the custody of any child willfully or negligently to cause or permit the life of such child to be endangered or the health of such child to be injured, or willfully or negligently to cause or permit such child to be placed in a situation that its life, health or morals may be endangered, or to cause or permit such child to be overworked, tortured, tormented, mutilated, beaten or cruelly treated. Any person violating this section is guilty of a Class 6 felony.

B. If a prosecution under this section is based solely on the accused parent having left the child at a hospital or emergency medical services agency, it shall be an affirmative defense to prosecution of a parent under this section that such parent safely delivered the child *within the first 30 days of the child's life* to (i) a hospital that provides 24-hour emergency services ~~or to~~, (ii) an attended emergency medical services agency that employs emergency medical services personnel, ~~within the first 14 days of the child's life~~ or (iii) a newborn safety device located at and operated by such hospital or emergency medical services agency. In order for the affirmative defense to apply, the child shall be delivered in a manner reasonably calculated to ensure the child's safety.

§ 63.2-100. Definitions.

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

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

307 1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or
308 inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than
309 accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental
310 functions, including, but not limited to, a child who is with his parent or other person responsible for his
311 care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled
312 substance, or (ii) during the unlawful sale of such substance by that child's parents or other person
313 responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would
314 constitute a felony violation of § 18.2-248;

315 2. Whose parents or other person responsible for his care neglects or refuses to provide care
316 necessary for his health. However, no child who in good faith is under treatment solely by spiritual
317 means through prayer in accordance with the tenets and practices of a recognized church or religious
318 denomination shall for that reason alone be considered to be an abused or neglected child. Further, a
319 decision by parents who have legal authority for the child or, in the absence of parents with legal
320 authority for the child, any person with legal authority for the child, who refuses a particular medical
321 treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary
322 care if (i) such decision is made jointly by the parents or other person with legal authority and the child;
323 (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the
324 subject of his medical treatment; (iii) the parents or other person with legal authority and the child have
325 considered alternative treatment options; and (iv) the parents or other person with legal authority and the
326 child believe in good faith that such decision is in the child's best interest. Nothing in this subdivision
327 shall be construed to limit the provisions of § 16.1-278.4;

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

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

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

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

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

342 If a civil proceeding under this title is based solely on the parent having left the child at a hospital
343 or emergency medical services agency, it shall be an affirmative defense that such parent safely
344 delivered the child *within 30 days of the child's birth* to (i) a hospital that provides 24-hour emergency
345 services ~~or to~~, (ii) an attended emergency medical services agency that employs emergency medical
346 services providers, ~~within 14 days of the child's birth~~ or (iii) a newborn safety device located at and
347 operated by such hospital or emergency medical services agency. For purposes of terminating parental
348 rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected
349 child upon the ground of abandonment.

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

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

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

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

364 "Adult exploitation" means the illegal, unauthorized, improper, or fraudulent use of an adult as
365 defined in § 63.2-1603 or his funds, property, benefits, resources, or other assets for another's profit,
366 benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the
367 adult of his rightful use of or access to such funds, property, benefits, resources, or other assets. "Adult

exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an intentional failure to use the financial resources of an adult in a manner that results in neglect of such adult; (ii) the acquisition, possession, or control of an adult's financial resources or property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services or perform services against his will for another's profit, benefit, or advantage if the adult did not agree, or was tricked, misled, or defrauded into agreeing, to pay for such goods or services or to perform such services.

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

"Adult neglect" means that an adult as defined in § 63.2-1603 is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. However, no adult shall be considered neglected solely on the basis that such 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, infirm or disabled 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 infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped 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 persons 62 years of age or older or the disabled 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 aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

"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 vacation;

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

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

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

"Department" means the State Department of Social Services.

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

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

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

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

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

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

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

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

"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by

birth or adoption of the person who maintains such home and children of personal friends of such person; (ii) a home in which is received a child or children committed under the provisions of 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 (iii) a home in which are received only children who are the subject of a properly executed power of attorney pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20.

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

"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 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 this 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

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

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

560 "Qualified residential treatment program" means a program that (i) provides 24-hour residential
561 placement services for children in foster care; (ii) has adopted a trauma-informed treatment model that
562 meets the clinical and other needs of children with serious emotional or behavioral disorders, including
563 any clinical or other needs identified through assessments conducted pursuant to clause (viii) of this
564 definition; (iii) employs registered or licensed nursing and other clinical staff who provide care, on site
565 and within the scope of their practice, and are available 24 hours a day, 7 days a week; (iv) conducts
566 outreach with the child's family members, including efforts to maintain connections between the child
567 and his siblings and other family; documents and maintains records of such outreach efforts; and
568 maintains contact information for any known biological family and fictive kin of the child; (v) whenever
569 appropriate and in the best interest of the child, facilitates participation by family members in the child's
570 treatment program before and after discharge and documents the manner in which such participation is
571 facilitated; (vi) provides discharge planning and family-based aftercare support for at least six months
572 after discharge; (vii) is licensed in accordance with 42 U.S.C. § 671(a)(10) and accredited by an
573 organization approved by the federal Secretary of Health and Human Services; and (viii) requires that
574 any child placed in the program receive an assessment within 30 days of such placement by a qualified
575 individual that (a) assesses the strengths and needs of the child using an age-appropriate, evidence-based,
576 validated, and functional assessment tool approved by the Commissioner of Social Services; (b)
577 identifies whether the needs of the child can be met through placement with a family member or in a
578 foster home or, if not, in a placement setting authorized by 42 U.S.C. § 672(k)(2), including a qualified
579 residential treatment program, that would provide the most effective and appropriate level of care for the
580 child in the least restrictive environment and be consistent with the short-term and long-term goals
581 established for the child in his foster care or permanency plan; (c) establishes a list of short-term and
582 long-term mental and behavioral health goals for the child; and (d) is documented in a written report to
583 be filed with the court prior to any hearing on the child's placement pursuant to § 16.1-281, 16.1-282,
584 16.1-282.1, or 16.1-282.2.

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

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

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

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

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

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

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

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

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