

SENATE BILL NO. 642

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice

on _____)

(Patrons Prior to Substitute--Senators Perry and Salim [SB 319])

A BILL to amend and reenact §§ 16.1-228 and 18.2-308.1:8 of the Code of Virginia, relating to purchase, possession, or transportation of firearm; assault and battery of a family or household member or intimate partner; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-228 and 18.2-308.1:8 of the Code of Virginia are amended and reenacted 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

27 for the child, any person with legal authority for the child who refuses a particular medical treatment for
28 a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such
29 decision is made jointly by the parents or other person with legal authority and the child; (ii) the child has
30 reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical
31 treatment; (iii) the parents or other person with legal authority and the child have considered alternative
32 treatment options; and (iv) the parents or other person with legal authority and the child believe in good
33 faith that such decision is in the child's best interest. No child whose parent or other person responsible
34 for his care allows the child to engage in independent activities without adult supervision shall for that
35 reason alone be considered to be an abused or neglected child, provided that (a) such independent activities
36 are appropriate based on the child's age, maturity, and physical and mental abilities and (b) such lack of
37 supervision does not constitute conduct that is so grossly negligent as to endanger the health or safety of
38 the child. Such independent activities include traveling to or from school or nearby locations by bicycle
39 or on foot, playing outdoors, or remaining at home for a reasonable period of time. Nothing in this
40 subdivision shall be construed to limit the provisions of § 16.1-278.4;

- 41 3. Whose parents or other person responsible for his care abandons such child;
- 42 4. Whose parents or other person responsible for his care, or an intimate partner of such parent or
43 person, commits or allows to be committed any act of sexual exploitation or any sexual act upon a child
44 in violation of the law;
- 45 5. Who is without parental care or guardianship caused by the unreasonable absence or the mental
46 or physical incapacity of the child's parent, guardian, legal custodian, or other person standing in loco
47 parentis;
- 48 6. Whose parents or other person responsible for his care creates a substantial risk of physical or
49 mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as
50 defined in § 55.1-2000, with a person to whom the child is not related by blood or marriage and who the
51 parent or other person responsible for his care knows has been convicted of an offense against a minor for
52 which registration is required as a Tier III offender pursuant to § 9.1-902; or

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

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

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

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

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

70 "Child," "juvenile," or "minor" means a person who is (i) younger than 18 years of age or (ii) for
71 purposes of the Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9 of Title
72 63.2, younger than 21 years of age and meets the eligibility criteria set forth in § 63.2-919.

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

80 what the court or the local child protective services unit determines to be incidents of physical, emotional
81 or sexual abuse in the home be considered a child in need of services for that reason alone.

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

87 "Child in need of supervision" means:

88 1. A child who, while subject to compulsory school attendance, is habitually and without
89 justification absent from school, and (i) the child has been offered an adequate opportunity to receive the
90 benefit of any and all educational services and programs that are required to be provided by law and which
91 meet the child's particular educational needs, (ii) the school system from which the child is absent or other
92 appropriate agency has made a reasonable effort to effect the child's regular attendance without success,
93 and (iii) the school system has provided documentation that it has complied with the provisions of § 22.1-
94 258; or

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

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

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

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

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

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

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

120 "Family abuse" means any act involving violence, force, or threat that results in bodily injury or
121 places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by
122 a person against such person's family or household member. Such act includes, but is not limited to, any
123 forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.) of Chapter
124 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable
125 apprehension of death, sexual assault, or bodily injury.

126 "Family or household member" means (i) the person's spouse, whether or not he or she resides in
127 the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the
128 same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters,
129 half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in
130 the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-
131 law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual
132 who has a child in common with the person, whether or not the person and that individual have been

133 married or have resided together at any time, ~~or~~ (vi) any individual who cohabits or who, within the
134 previous 12 months, cohabited with the person, and any children of either of them then residing in the
135 same home with the person, or (vii) the person's intimate partner.

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

138 "Foster care services" means the provision of a full range of casework, treatment and community
139 services for a planned period of time to a child who is abused or neglected as defined in § 63.2-100 or in
140 need of services as defined in this section and his family when the child (i) has been identified as needing
141 services to prevent or eliminate the need for foster care placement, (ii) has been placed through an
142 agreement between the local board of social services or a public agency designated by the community
143 policy and management team and the parents or guardians where legal custody remains with the parents
144 or guardians, (iii) has been committed or entrusted to a local board of social services or child welfare
145 agency, (iv) has been placed under the supervisory responsibility of the local board pursuant to § 16.1-
146 293, or (v) is living with a relative participating in the Federal-Funded Kinship Guardianship Assistance
147 program set forth in § 63.2-1305 and developed consistent with 42 U.S.C. § 673 or the State-Funded
148 Kinship Guardianship Assistance program set forth in § 63.2-1306.

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

155 "Independent living services" means services and activities provided to a child in foster care 14
156 years of age or older and who has been committed or entrusted to a local board of social services, child
157 welfare agency, or private child-placing agency. "Independent living services" may also mean services
158 and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached
159 the age of 21 years; (ii) is between the ages of 18 and 21 and who, immediately prior to his commitment

160 to the Department of Juvenile Justice, was in the custody of a local board of social services; or (iii) is a
161 child at least 16 years of age or a person between the ages of 18 and 21 who was committed to the
162 Department of Juvenile Justice immediately prior to placement in an independent living arrangement.
163 "Independent living services" includes counseling, education, housing, employment, and money
164 management skills development and access to essential documents and other appropriate services to help
165 children or persons prepare for self-sufficiency.

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

168 "Intimate partner" means an individual who, within the previous 12 months, was in a romantic,
169 dating, or sexual relationship with the person.

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

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

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

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

183 "Permanent foster care placement" means the place of residence in which a child resides and in
184 which he has been placed pursuant to the provisions of §§ 63.2-900 and 63.2-908 with the expectation and
185 agreement between the placing agency and the place of permanent foster care that the child shall remain
186 in the placement until he reaches the age of majority unless modified by court order or unless removed

187 pursuant to § 16.1-251 or 63.2-1517. A permanent foster care placement may be a place of residence of
188 any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

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

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

214 foster care or permanency plan; (c) establishes a list of short-term and long-term mental and behavioral
215 health goals for the child; and (d) is documented in a written report to be filed with the court prior to any
216 hearing on the child's placement pursuant to § 16.1-281, 16.1-282, 16.1-282.1, or 16.1-282.2.

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

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

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

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

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

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

230 "Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of §
231 16.1-269.1 when committed by a juvenile 14 years of age or older.

232 **§ 18.2-308.1:8. Purchase, possession, or transportation of firearm following an assault and**
233 **battery of a family or household member or an intimate partner; penalty.**

234 A. 1. Any person who knowingly and intentionally purchases, possesses, or transports any firearm
235 following a misdemeanor conviction for an offense that occurred on or after July 1, 2021, for (i) the offense
236 of assault and battery of a family or household member or (ii) an offense substantially similar to clause (i)
237 under the laws of any other state or of the United States is guilty of a Class 1 misdemeanor.

238 2. Any person who knowingly and intentionally purchases, possesses, or transports any firearm
239 following a misdemeanor conviction for an offense that occurred on or after July 1, 2024, for (i) the offense

240 of assault and battery against an intimate partner or (ii) an offense substantially similar to clause (i) under
241 the laws of any other state or of the United States is guilty of a Class 1 misdemeanor.

242 B. For the purposes of this section, ~~"family:~~

243 "Family or household member" means (i) the person's spouse, whether or not he resides in the
244 same home with the person; (ii) the person's former spouse, whether or not he resides in the same home
245 with the person; or (iii) any individual who has a child in common with the person, whether or not the
246 person and that individual have been married or have resided together at any time.

247 "Intimate partner" means the same as that term is defined in § 16.1-228.

248 C. Any person prohibited from purchasing, possessing, or transporting a firearm pursuant to
249 subsection A shall be prohibited from purchasing, possessing, or transporting a firearm for three years
250 following the date of the conviction at which point the person convicted of such offense shall no longer
251 be prohibited from purchasing, possessing, or transporting a firearm pursuant to subsection A. Such person
252 shall have his firearms rights restored, unless such person receives another disqualifying conviction, is
253 subject to a protective order that would restrict his rights to carry a firearm, or is otherwise prohibited by
254 law from purchasing, possessing, or transporting a firearm.

255 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
256 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
257 **appropriation is _____ for periods of imprisonment in state adult correctional facilities;**
258 **therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia**
259 **Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-**
260 **19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is _____ for**
261 **periods of commitment to the custody of the Department of Juvenile Justice.**

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