

HOUSE BILL NO. 1248

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Watts)

A BILL to amend and reenact §§ 16.1-228, 16.1-278.8, and 18.2-371 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 16.1-278.9:1, relating to juveniles; adjudication of delinquency.

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

**1. That §§ 16.1-228, 16.1-278.8, and 18.2-371 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 16.1-278.9:1 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

27 decision by parents who have legal authority for the child or, in the absence of parents with legal authority  
28 for the child, any person with legal authority for the child who refuses a particular medical treatment for  
29 a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such  
30 decision is made jointly by the parents or other person with legal authority and the child; (ii) the child has  
31 reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical  
32 treatment; (iii) the parents or other person with legal authority and the child have considered alternative  
33 treatment options; and (iv) the parents or other person with legal authority and the child believe in good  
34 faith that such decision is in the child's best interest. Nothing in this subdivision shall be construed to limit  
35 the provisions of § 16.1-278.4;

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

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

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

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

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

50 If a civil proceeding under this chapter is based solely on the parent having left the child at a  
51 hospital or emergency medical services agency, it shall be an affirmative defense that such parent safely  
52 delivered the child to a hospital that provides 24-hour emergency services or to an attended emergency  
53 medical services agency that employs emergency medical services personnel, within 14 days of the child's

54 birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the  
55 court may find such a child is a neglected child upon the ground of abandonment.

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

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

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

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

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

69 "Child in need of services" means (i) a child whose behavior, conduct, or condition presents or  
70 results in a serious threat to the well-being and physical safety of the child; (ii) a child under the age of  
71 14 whose behavior, conduct, or condition presents or results in a serious threat to the well-being and  
72 physical safety of another person; or (iii) a child younger than 11 years of age who has committed a  
73 delinquent act; however, no child who in good faith is under treatment solely by spiritual means through  
74 prayer in accordance with the tenets and practices of a recognized church or religious denomination shall  
75 for that reason alone be considered to be a child in need of services, nor shall any child who habitually  
76 remains away from or habitually deserts or abandons his family as a result of what the court or the local  
77 child protective services unit determines to be incidents of physical, emotional or sexual abuse in the home  
78 be considered a child in need of services for that reason alone.

79 However, to find that a child falls within these provisions, ~~(i)~~ (a) the conduct complained of must  
80 present a clear and substantial danger to the child's life or health or to the life or health of another person,

81 ~~(ii)~~ (b) the child or his family is in need of treatment, rehabilitation, or services not presently being  
82 received; and ~~(iii)~~ (c) the intervention of the court is essential to provide the treatment, rehabilitation, or  
83 services needed by the child or his family.

84 "Child in need of supervision" means:

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

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

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

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

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

108 "Delinquent child" means a child 11 years of age or older who has committed a delinquent act or  
109 an adult who has committed a delinquent act prior to his ~~18th~~ eighteenth birthday, except where the  
110 jurisdiction of the juvenile court has been terminated under the provisions of § 16.1-269.6.

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

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

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

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

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

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

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

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

160 "Independent living services" includes counseling, education, housing, employment, and money

161 management skills development and access to essential documents and other appropriate services to help  
162 children or persons prepare for self-sufficiency.

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

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

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

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

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

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

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

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

212 "Residual parental rights and responsibilities" means all rights and responsibilities remaining with  
213 the parent after the transfer of legal custody or guardianship of the person, including but not limited to the



214 right of visitation, consent to adoption, the right to determine religious affiliation and the responsibility  
215 for support.

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

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

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

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

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

225 "Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of §  
226 16.1-269.1 when committed by a juvenile 14 years of age or older.

227 **§ 16.1-278.8. Delinquent juveniles.**

228 A. If a juvenile 11 years of age or older is found to be delinquent, except where such finding  
229 involves a refusal to take a breath test in violation of § 18.2-268.2 or a similar ordinance, the juvenile  
230 court or the circuit court may make any of the following orders of disposition for his supervision, care and  
231 rehabilitation:

- 232 1. Enter an order pursuant to the provisions of § 16.1-278;
- 233 2. Permit the juvenile to remain with his parent, subject to such conditions and limitations as the  
234 court may order with respect to the juvenile and his parent;
- 235 3. Order the parent of a juvenile living with him to participate in such programs, cooperate in such  
236 treatment or be subject to such conditions and limitations as the court may order and as are designed for  
237 the rehabilitation of the juvenile and his parent;
- 238 4. Defer disposition for a specific period of time established by the court with due regard for the  
239 gravity of the offense and the juvenile's history, after which time the charge may be dismissed by the judge  
240 if the juvenile exhibits good behavior during the period for which disposition is deferred;

241           4a. Defer disposition and place the juvenile in the temporary custody of the Department to attend  
242 a boot camp established pursuant to § 66-13 provided bed space is available for confinement and the  
243 juvenile (i) has been found delinquent for an offense that would be a Class 1 misdemeanor or felony if  
244 committed by an adult, (ii) has not previously been and is not currently being adjudicated delinquent or  
245 found guilty of a violent juvenile felony, (iii) has not previously attended a boot camp, (iv) has not  
246 previously been committed to and received by the Department, and (v) has had an assessment completed  
247 by the Department or its contractor concerning the appropriateness of the candidate for a boot camp. Upon  
248 the juvenile's withdrawal, removal or refusal to comply with the terms and conditions of participation in  
249 the program, he shall be brought before the court for a hearing at which the court may impose any other  
250 disposition as authorized by this section which could have been imposed at the time the juvenile was  
251 placed in the custody of the Department;

252           5. Without entering a judgment of guilty and with the consent of the juvenile and his attorney,  
253 defer disposition of the delinquency charge for a specific period of time established by the court with due  
254 regard for the gravity of the offense and the juvenile's history, and place the juvenile on probation under  
255 such conditions and limitations as the court may prescribe. Upon fulfillment of the terms and conditions,  
256 the court shall discharge the juvenile and dismiss the proceedings against him. Discharge and dismissal  
257 under these provisions shall be without adjudication of guilt;

258           6. Order the parent of a juvenile with whom the juvenile does not reside to participate in such  
259 programs, cooperate in such treatment or be subject to such conditions and limitations as the court may  
260 order and as are designed for the rehabilitation of the juvenile where the court determines this participation  
261 to be in the best interest of the juvenile and other parties concerned and where the court determines it  
262 reasonable to expect the parent to be able to comply with such order;

263           7. Place the juvenile on probation under such conditions and limitations as the court may prescribe;

264           7a. Place the juvenile on probation and order treatment for the abuse or dependence on alcohol or  
265 drugs in a program licensed by the Department of Behavioral Health and Developmental Services for the  
266 treatment of juveniles for substance abuse provided that (i) the juvenile has received a substance abuse  
267 screening and assessment pursuant to § 16.1-273 and that such assessment reasonably indicates that the

268 commission of the offense was motivated by, or closely related to, the habitual use of alcohol or drugs  
269 and indicates that the juvenile is in need of treatment for this condition; (ii) the juvenile has not previously  
270 been and is not currently being adjudicated for a violent juvenile felony; and (iii) such facility is available.  
271 Upon the juvenile's withdrawal, removal, or refusal to comply with the conditions of participation in the  
272 program, he shall be brought before the court for a hearing at which the court may impose any other  
273 disposition authorized by this section. The court shall review such placements at 30-day intervals;

274 8. Impose a fine not to exceed \$500 upon such juvenile;

275 9. Suspend the motor vehicle and driver's license of such juvenile or impose a curfew on the  
276 juvenile as to the hours during which he may operate a motor vehicle. Any juvenile whose driver's license  
277 is suspended may be referred for an assessment and subsequent referral to appropriate services, upon such  
278 terms and conditions as the court may order. The court, in its discretion and upon a demonstration of  
279 hardship, may authorize the use of a restricted permit to operate a motor vehicle by any juvenile who  
280 enters such program for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to and  
281 from school. The restricted permit shall be issued in accordance with the provisions of such subsection.  
282 However, only an abstract of the court order that identifies the juvenile and the conditions under which  
283 the restricted license is to be issued shall be sent to the Department of Motor Vehicles.

284 If a curfew is imposed, the juvenile shall surrender his driver's license, which shall be held in the  
285 physical custody of the court during any period of curfew restriction. The court shall send an abstract of  
286 any order issued under the provisions of this section to the Department of Motor Vehicles, which shall  
287 preserve a record thereof. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter  
288 or the provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys  
289 for the Commonwealth and courts. A copy of the court order, upon which shall be noted all curfew  
290 restrictions, shall be provided to the juvenile and shall contain such information regarding the juvenile as  
291 is reasonably necessary to identify him. The juvenile may operate a motor vehicle under the court order  
292 in accordance with its terms.

293 Any juvenile who operates a motor vehicle in violation of any restrictions imposed pursuant to this  
294 section is guilty of a violation of § 46.2-301.

295 The Department of Motor Vehicles shall refuse to issue a driver's license to any juvenile denied a  
296 driver's license until such time as is stipulated in the court order or until notification by the court of  
297 withdrawal of the order imposing the curfew;

298 10. Require the juvenile to make restitution or reparation to the aggrieved party or parties for actual  
299 damages or loss caused by the offense for which the juvenile was found to be delinquent;

300 11. Require the juvenile to participate in a public service project under such conditions as the court  
301 prescribes;

302 12. In case of traffic violations, impose only those penalties that are authorized to be imposed on  
303 adults for such violations. However, for those violations punishable by confinement if committed by an  
304 adult, confinement shall be imposed only as authorized by this title;

305 13. Transfer legal custody to any of the following:

306 a. A relative or other individual who, after study, is found by the court to be qualified to receive  
307 and care for the juvenile;

308 b. A child welfare agency, private organization or facility that is licensed or otherwise authorized  
309 by law to receive and provide care for such juvenile. The court shall not transfer legal custody of a  
310 delinquent juvenile to an agency, organization or facility outside of the Commonwealth without the  
311 approval of the Director; or

312 c. The local board of social services of the county or city in which the court has jurisdiction or, at  
313 the discretion of the court, to the local board of the county or city in which the juvenile has residence if  
314 other than the county or city in which the court has jurisdiction. The board shall accept the juvenile for  
315 care and custody, provided that it has been given reasonable notice of the pendency of the case and an  
316 opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction,  
317 such local board may be required to temporarily accept a juvenile for a period not to exceed 14 days  
318 without prior notice or an opportunity to be heard if the judge entering the placement order describes the  
319 emergency and the need for such temporary placement in the order. Nothing in this subdivision shall  
320 prohibit the commitment of a juvenile to any local board of social services in the Commonwealth when  
321 such local board consents to the commitment. The board to which the juvenile is committed shall have the

322 final authority to determine the appropriate placement for the juvenile. Any order authorizing removal  
323 from the home and transferring legal custody of a juvenile to a local board of social services as provided  
324 in this subdivision shall be entered only upon a finding by the court that reasonable efforts have been made  
325 to prevent removal and that continued placement in the home would be contrary to the welfare of the  
326 juvenile, and the order shall so state;

327 14. Unless waived by an agreement between the attorney for the Commonwealth and the juvenile  
328 and his attorney or other legal representative, upon consideration of the results of an investigation  
329 completed pursuant to § 16.1-273, commit the juvenile to the Department of Juvenile Justice, but only if  
330 (i) he is 11 years of age or older and has been adjudicated delinquent of an act enumerated in subsection  
331 B or C of § 16.1-269.1 or (ii) he is 14 years of age or older and the current offense is (a) an offense that  
332 would be a felony if committed by an adult, (b) an offense that would be a Class 1 misdemeanor if  
333 committed by an adult and the juvenile has previously been found to be delinquent based on an offense  
334 that would be a felony if committed by an adult, or (c) an offense that would be a Class 1 misdemeanor if  
335 committed by an adult and the juvenile has previously been adjudicated delinquent of three or more  
336 offenses that would be a Class 1 misdemeanor if committed by an adult, and each such offense was not a  
337 part of a common act, transaction or scheme;

338 15. Impose the penalty authorized by § 16.1-284;

339 16. Impose the penalty authorized by § 16.1-284.1;

340 17. Unless waived by an agreement between the attorney for the Commonwealth and the juvenile  
341 and his attorney or other legal representative, upon consideration of the results of an investigation  
342 completed pursuant to § 16.1-273, impose the penalty authorized by § 16.1-285.1;

343 18. Impose the penalty authorized by § 16.1-278.9; or

344 19. Require the juvenile to participate in a gang-activity prevention program including, but not  
345 limited to, programs funded under the Virginia Juvenile Community Crime Control Act pursuant to §  
346 16.1-309.7, if available, when a juvenile has been found delinquent of any of the following violations: §  
347 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128,

348 18.2-137, 18.2-138, 18.2-146, or 18.2-147, or any violation of a local ordinance adopted pursuant to §  
349 15.2-1812.2.

350 B. If the court finds a juvenile 11 years of age or older delinquent of any of the following offenses,  
351 the court shall require the juvenile to make at least partial restitution or reparation for any property damage,  
352 for loss caused by the offense, or for actual medical expenses incurred by the victim as a result of the  
353 offense: § 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127,  
354 18.2-128, 18.2-137, 18.2-138, 18.2-146, or 18.2-147; or for any violation of a local ordinance adopted  
355 pursuant to § 15.2-1812.2. The court shall further require the juvenile to participate in a community service  
356 project under such conditions as the court prescribes.

357 **§ 16.1-278.9:1. Delinquent act committed by juvenile younger than 11 years of age;**  
358 **disposition.**

359 If a juvenile younger than 11 years of age is found to have committed a delinquent act, the juvenile  
360 shall not be proceeded upon as delinquent pursuant to § 16.1-278.8; however, the court may make any  
361 orders of disposition authorized under § 16.1-278.4 or 16.1-278.5.

362 **§ 18.2-371. Causing or encouraging acts rendering children delinquent, abused, etc.; penalty;**  
363 **abandoned infant.**

364 Any person 18 years of age or older, including the parent of any child, who (i) willfully contributes  
365 to, encourages, or causes any act, omission, or condition that renders a child delinquent, in need of  
366 services, in need of supervision, or abused or neglected as defined in § 16.1-228 or willfully contributes  
367 to, encourages, or causes any act, omission, or condition that causes a child younger than 11 years of age  
368 to commit a criminal offense or (ii) engages in consensual sexual intercourse or anal intercourse with or  
369 performs cunnilingus, fellatio, or anilingus upon or by a child 15 or older not his spouse, child, or  
370 grandchild is guilty of a Class 1 misdemeanor. This section shall not be construed as repealing, modifying,  
371 or in any way affecting §§ 18.2-18, 18.2-19, 18.2-61, 18.2-63, and 18.2-347.

372 If the prosecution under this section is based solely on the accused parent having left the child at  
373 a hospital or emergency medical services agency, it shall be an affirmative defense to prosecution of a  
374 parent under this section that such parent safely delivered the child to a hospital that provides 24-hour

**375** emergency services or to an attended emergency medical services agency that employs emergency  
**376** medical services personnel, within the first 14 days of the child's life. In order for the affirmative defense  
**377** to apply, the child shall be delivered in a manner reasonably calculated to ensure the child's safety.

**378** #