

## VIRGINIA COMMISSION ON YOUTH

### Review of the Standard of Proof to Determine a Founded Case of Child Abuse and Neglect

#### DEFINITIONS

##### **Founded<sup>1</sup>**

A review of the facts shows by a preponderance of the evidence that child abuse or neglect has occurred. A determination that a case is founded shall be based primarily on first source evidence; in no instance shall a determination that a case is founded be based solely on indirect evidence or an anonymous complaint.

##### **Preponderance of evidence<sup>2</sup>**

Just enough evidence to make it more likely than not that the asserted facts are true. It is evidence which is of greater weight or more convincing than the evidence offered in opposition.

##### **Gross Negligence<sup>3</sup>**

That degree of negligence which shows indifference to others as constitutes an utter disregard of prudence amounting to a complete neglect of the safety of [another]. It must be such a degree of negligence as would shock fair minded [people] although something less than willful recklessness.

##### **Willful Misconduct<sup>4</sup>**

The Virginia Department of Social Services uses the definition of “willful and wanton conduct” to define “willful misconduct.” “In order that one may be [found to have committed] willful [sic] or wanton conduct, it must be shown that he was conscious of his conduct, and conscious, from his knowledge of existing conditions, that injury would likely or probably result from his conduct, and that with reckless indifference to consequences he consciously and intentionally did some wrongful act or omitted some known duty which produced the injurious result.”

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<sup>1</sup> 22VAC40-705-10. Definitions. <https://law.lis.virginia.gov/admincode/title22/agency40/chapter705/section10/>.

<sup>2</sup> Ibid.

<sup>3</sup> Virginia Department of Social Services, Child and Family Services Manual, C. Child Protective Services, Section 5: Out-of-Family Investigations. [http://www.dss.virginia.gov/files/division/dfs/cps/intro\\_page/manuals/07-2017/section\\_5\\_out\\_of\\_family\\_investigations.pdf](http://www.dss.virginia.gov/files/division/dfs/cps/intro_page/manuals/07-2017/section_5_out_of_family_investigations.pdf). (pg. 40).

<sup>4</sup> Ibid. (pg. 40).