VIRGINIA ACTS OF ASSEMBLY — CHAPTER

ENROLLED

An Act to amend and reenact §§ 2.2-3803, 2.2-4001, 2.2-4007, 2.2-4018, 2.2-4025, 2.2-4345, 15.2-412, 15.2-518, 15.2-527, 15.2-1231, 15.2-1541.1, 16.1-69.53, 16.1-246, 16.1-260, 16.1-278.2, 16.1-278.4, 16.1-278.18, 16.1-281, 16.1-294, 16.1-332, 20-64, 20-88.02, 20-108, 20-108.2, 22.1-30, 22.1-287, 24.2-411.2, 32.1-111.14, 32.1-273, 32.1-321.4, 32.1-350, 37.1-98, 37.1-197.1, 53.1-61, 53.1-131, 54.1-2969, 58.1-3, 58.1-439.9, 58.1-3134 and 59.1-21.21:1 of the Code of Virginia; to amend the Code of Virginia by adding in Title 2.2 a section numbered 2.2-3315.1; by adding in Title 15.2 a chapter numbered 28.1, consisting of sections numbered 15.2-2811 through 15.2-2817; by adding in Title 46.2 a section numbered 46.2-932.1; by adding in Title 51.5 a chapter numbered 12, consisting of sections numbered 51.5-60 through 51.5-105, and a chapter numbered 13, consisting of sections numbered 51.5-106 through 51.5-114; and by adding a title numbered 63.2, consisting of chapters numbered 1 through 22, containing sections numbered 63.2-100 through 63.2-2204; and to repeal § 20-49.9 and Title 63.1 (§§ 63.1-1.1 through 63.1-343), revising and recodifying law pertaining to public assistance, social services, child support and persons with disabilities.

[S 303]

Approved

SB303ER

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3803, 2.2-4001, 2.2-4007, 2.2-4018, 2.2-4025, 2.2-4345, 15.2-412, 15.2-518, 15.2-527, 15.2-1231, 15.2-1541.1, 16.1-69.53, 16.1-246, 16.1-260, 16.1-278.2, 16.1-278.4, 16.1-278.18, 16.1-281, 16.1-294, 16.1-332, 20-64, 20-88.02, 20-108, 20-108.2, 22.1-30, 22.1-287, 24.2-411.2, 32.1-111.14, 32.1-273, 32.1-321.4, 32.1-350, 37.1-98, 37.1-197.1, 53.1-61, 53.1-131, 54.1-2969, 58.1-3, 58.1-439.9, 58.1-3134 and 59.1-21.21:1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 2.2 a section numbered 2.2-3315.1; by adding in Title 15.2 a chapter numbered 28.1, consisting of sections numbered 15.2-2811 through 15.2-2817; by adding in Title 46.2 a section numbered 46.2-932.1; by adding in Title 51.5 a chapter numbered 12, consisting of sections numbered 51.5-60 through 51.5-105, and a chapter numbered 13, consisting of sections numbered 51.5-106 through 51.5-114; and by adding a title numbered 63.2, consisting of chapters numbered 1 through 22, containing sections numbered 63.2-100 through 63.2-2204 as follows:

§ 2.2-3315.1. White Cane Safety Day.

Each year, the Governor may take suitable public notice of October 15 as White Cane Safety Day. He may issue a proclamation in which:

1. He comments upon the significance of the white cane;

2. He calls upon the citizens of the Commonwealth to observe the provisions of the White Cane Law and to take precautions necessary to the safety of the disabled;

3. He reminds the citizens of the Commonwealth of the policies with respect to the disabled herein declared and urges the citizens to cooperate in giving effect to them; and

4. He emphasizes the need of the citizens to be aware of the presence of disabled persons in the community and to keep safe and functional for the disabled the streets, highways, sidewalks, walkways, public buildings, public facilities, other public places, places of public accommodation, amusement and resort, and other places to which the public is invited, and to offer assistance to disabled persons upon appropriate occasions.

§ 2.2-3803. Administration of systems including personal information; Internet privacy policy; exception for state retirement systems.

A. Any agency maintaining an information system that includes personal information shall:

1. Collect, maintain, use, and disseminate only that personal information permitted or required by law to be so collected, maintained, used, or disseminated, or necessary to accomplish a proper purpose of the agency;

2. Collect information to the greatest extent feasible from the data subject directly;

3. Establish categories for maintaining personal information to operate in conjunction with confidentiality requirements and access controls;

4. Maintain information in the system with accuracy, completeness, timeliness, and pertinence as necessary to ensure fairness in determinations relating to a data subject;

5. Make no dissemination to another system without (i) specifying requirements for security and usage including limitations on access thereto, and (ii) receiving reasonable assurances that those requirements and limitations will be observed. This subdivision shall not apply, however, to a

dissemination made by an agency to an agency in another state, district or territory of the United States where the personal information is requested by the agency of such other state, district or territory in connection with the application of the data subject therein for a service, privilege or right under the laws thereof, nor shall this apply to information transmitted to family advocacy representatives of the United States Armed Forces in accordance with subsection ~~O~~ *N* of § ~~63.1-248.6~~ *63.2-1503*;

6. Maintain a list of all persons or organizations having regular access to personal information in the information system;

7. Maintain for a period of three years or until such time as the personal information is purged, whichever is shorter, a complete and accurate record, including identity and purpose, of every access to any personal information in a system, including the identity of any persons or organizations not having regular access authority but excluding access by the personnel of the agency wherein data is put to service for the purpose for which it is obtained;

8. Take affirmative action to establish rules of conduct and inform each person involved in the design, development, operation, or maintenance of the system, or the collection or use of any personal information contained therein, about all the requirements of this chapter, the rules and procedures, including penalties for noncompliance, of the agency designed to assure compliance with such requirements;

9. Establish appropriate safeguards to secure the system from any reasonably foreseeable threat to its security; and

10. Collect no personal information concerning the political or religious beliefs, affiliations, and activities of data subjects that is maintained, used or disseminated in or by any information system operated by any agency unless authorized explicitly by statute or ordinance.

B. ~~By December 1, 2000,~~ Every public body, as defined in § 2.2-3701, that has an Internet website associated with that public body shall develop an Internet privacy policy and an Internet privacy policy statement that explains the policy to the public. The policy shall be consistent with the requirements of this chapter. ~~By January 1, 2001,~~ The statement shall be made available on the public body's website in a conspicuous manner. The Secretary of Technology or his designee shall provide guidelines for developing the policy and the statement, and each public body shall tailor the policy and the statement to reflect the information practices of the individual public body. At minimum, the policy and the statement shall address (i) what information, including personally identifiable information, will be collected, if any; (ii) whether any information will be automatically collected simply by accessing the website and, if so, what information; (iii) whether the website automatically places a computer file, commonly referred to as a "cookie," on the Internet user's computer and, if so, for what purpose; and (iv) how the collected information is being used or will be used.

C. Notwithstanding the provisions of subsection A, the Virginia Retirement System may disseminate information as to the retirement status or benefit eligibility of any employee covered by the Virginia Retirement System, the Judicial Retirement System, the State Police Officers Retirement System, or the Virginia Law Officers' Retirement System, to the chief executive officer or personnel officers of the state or local agency by which he is employed.

§ 2.2-4001. Definitions.

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

"Agency" means any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases.

"Agency action" means either an agency's regulation or case decision or both, any violation, compliance, or noncompliance with which could be a basis for the imposition of injunctive orders, penal or civil sanctions of any kind, or the grant or denial of relief or of a license, right, or benefit by any agency or court.

"Basic law" or "basic laws" means provisions of the Constitution and statutes of the Commonwealth authorizing an agency to make regulations or decide cases or containing procedural requirements therefor.

"Case" or "case decision" means any agency proceeding or determination that, under laws or regulations at the time, a named party as a matter of past or present fact, or of threatened or contemplated private action, either is, is not, or may or may not be (i) in violation of such law or regulation or (ii) in compliance with any existing requirement for obtaining or retaining a license or other right or benefit.

"Guidance document" means any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations, excluding agency minutes or documents that pertain only to the internal management of agencies. Nothing in this definition shall be construed or interpreted to expand the identification or release of any document otherwise protected by law.

"Hearing" means agency processes other than those informational or factual inquiries of an informal

nature provided in §§ 2.2-4007 and 2.2-4019 and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 2.2-4009 in connection with the making of regulations or (ii) a similar right of private parties or requirement of public agencies as provided in § 2.2-4020 in connection with case decisions.

"Hearing officer" means an attorney selected from a list maintained by the Executive Secretary of the Supreme Court in accordance with § 2.2-4024.

"Public assistance *and social services* programs" means those programs specified in § ~~63.1-87~~ *63.2-100*.

"Rule" or "regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by an agency in accordance with the authority conferred on it by applicable basic laws.

"Subordinate" means (i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf.

§ 2.2-4007. Notice of intended regulatory action; public participation; informational proceedings; effect of noncompliance.

A. Any person may petition an agency to request the agency to develop a new regulation or amend an existing regulation. The agency receiving the petition shall consider and respond to the petition within 180 days. Agency decisions to initiate or not initiate rulemaking in response to petitions shall not be subject to judicial review.

B. In the case of all regulations, except those regulations exempted by §§ 2.2-4002, 2.2-4006 or § 2.2-4011, an agency shall provide the Registrar of Regulations with a Notice of Intended Regulatory Action that describes the subject matter and intent of the planned regulation. At least thirty days shall be provided for public comment after publication of the Notice of Intended Regulatory Action. An agency shall not file proposed regulations with the Registrar until the public comment period on the Notice of Intended Regulatory Action has closed.

C. Agencies shall state in the Notice of Intended Regulatory Action whether they plan to hold a public hearing on the proposed regulation after it is published. Agencies shall hold such public hearings if required by basic law. If the agency states an intent to hold a public hearing on the proposed regulation in the Notice of Intended Regulatory Action, then it shall hold the public hearing. If the agency states in its Notice of Intended Regulatory Action that it does not plan to hold a hearing on the proposed regulation, then no public hearing is required unless, prior to completion of the comment period specified in the Notice of Intended Regulatory Action (i) the Governor directs the agency to hold a public hearing or (ii) the agency receives requests for a public hearing from at least twenty-five persons.

D. Public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations shall be developed, adopted and utilized by each agency pursuant to the provisions of this chapter. The guidelines shall set out any methods for the identification and notification of interested parties, and any specific means of seeking input from interested persons or groups that the agency intends to use in addition to the Notice of Intended Regulatory Action. The guidelines shall set out a general policy for the use of standing or ad hoc advisory panels and consultation with groups and individuals registering interest in working with the agency. Such policy shall address the circumstances in which the agency considers the panels or consultation appropriate and intends to make use of the panels or consultation.

E. In formulating any regulation, including but not limited to those in public assistance *and social services* programs, the agency pursuant to its public participation guidelines shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency or its specially designated subordinate. However, the agency may begin drafting the proposed regulation prior to or during any opportunities it provides to the public to submit comments.

F. In the case of all regulations, except those regulations exempted by §§ 2.2-4002, 2.2-4006, or § 2.2-4011, the proposed regulation and general notice of opportunity for oral or written submittals as to that regulation shall be published in the Virginia Register of Regulations in accordance with the provisions of subsection B of § 2.2-4031. In addition, the agency may, in its discretion, (i) publish the notice in any newspaper and (ii) publicize the notice through press releases and such other media as will best serve the purpose and subject involved. The Register and any newspaper publication shall be made at least sixty days in advance of the last date prescribed in the notice for such submittals. All notices, written submittals, and transcripts, summaries or notations of oral presentations, as well as any agency action thereon, shall be matters of public record in the custody of the agency.

G. Before delivering any proposed regulation under consideration to the Registrar as required in subsection H, the agency shall deliver a copy of that regulation to the Department of Planning and Budget. In addition to determining the public benefit, the Department of Planning and Budget in

coordination with the agency, shall, within forty-five days, prepare an economic impact analysis of the proposed regulation. The economic impact analysis shall include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected by the regulation; the projected number of persons and employment positions to be affected; the impact of the regulation on the use and value of private property; and the projected costs to affected businesses, localities or entities to implement or comply with the regulations, including the estimated fiscal impact on such localities and sources of potential funds to implement and comply with such regulation. Agencies shall provide the Department with such estimated fiscal impacts on localities and sources of potential funds. The Department may request the assistance of any other agency in preparing the analysis. The Department shall deliver a copy of the analysis to the agency drafting the regulation, which shall comment thereon as provided in subsection H, and a copy to the Registrar for publication with the proposed regulation. No regulation shall be promulgated for consideration pursuant to subsection H until the impact analysis has been received by the Registrar. For purposes of this section, the term "locality, business, or entity particularly affected" means any locality, business, or entity that bears any identified disproportionate material impact that would not be experienced by other localities, businesses, or entities. The analysis shall represent the Department's best estimate for the purposes of public review and comment on the proposed regulation. The accuracy of the estimate shall in no way affect the validity of the regulation, nor shall any failure to comply with or otherwise follow the procedures set forth in this subsection create any cause of action or provide standing for any person under Article 5 (§ 2.2-4025 et seq.) of this chapter or otherwise to challenge the actions of the Department hereunder or the action of the agency in adopting the proposed regulation.

H. Before promulgating any regulation under consideration, the agency shall deliver a copy of that regulation to the Registrar together with a summary of the regulation and a separate and concise statement of (i) the basis of the regulation, defined as the statutory authority for promulgating the regulation, including an identification of the section number and a brief statement relating the content of the statutory authority to the specific regulation proposed; (ii) the purpose of the regulation, defined as the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare; (iii) the substance of the regulation, defined as the identification and explanation of the key provisions of the regulation that make changes to the current status of the law; (iv) the issues of the regulation, defined as the primary advantages and disadvantages for the public, and as applicable for the agency or the state, of implementing the new regulatory provisions; and (v) the agency's response to the economic impact analysis submitted by the Department of Planning and Budget pursuant to subsection G. Any economic impact estimate included in the agency's response shall represent the agency's best estimate for the purposes of public review and comment, but the accuracy of the estimate shall in no way affect the validity of the regulation. Staff as designated by the Code Commission shall review proposed regulation submission packages to ensure the requirements of this subsection are met prior to publication of the proposed regulation in the Register. The summary; the statement of the basis, purpose, substance, and issues; the economic impact analysis; and the agency's response shall be published in the Virginia Register of Regulations, together with the notice of opportunity for oral or written submittals on the proposed regulation.

I. When an agency formulating regulations in public assistance *and social services* programs cannot comply with the public comment requirements of subsection F due to time limitations imposed by state or federal laws or regulations for the adoption of such regulation, the Secretary of Health and Human Resources may shorten the time requirements of subsection F. If, in the Secretary's sole discretion, such time limitations reasonably preclude any advance published notice, he may waive the requirements of subsection F. However, the agency shall, as soon as practicable after the adoption of the regulation in a manner consistent with the requirements of subsection F, publish notice of the promulgation of the regulation and afford an opportunity for public comment. The precise factual basis for the Secretary's determination shall be stated in the published notice.

J. If one or more changes with substantial impact are made to a proposed regulation from the time that it is published as a proposed regulation to the time it is published as a final regulation, any person may petition the agency within thirty days from the publication of the final regulation to request an opportunity for oral and written submittals on the changes to the regulation. If the agency receives requests from at least twenty-five persons for an opportunity to submit oral and written comments on the changes to the regulation, the agency shall (i) suspend the regulatory process for thirty days to solicit additional public comment and (ii) file notice of the additional thirty-day public comment period with the Registrar of Regulations, unless the agency determines that the changes made are minor or inconsequential in their impact. The comment period, if any, shall begin on the date of publication of the notice in the Register. Agency denial of petitions for a comment period on changes to the regulation shall be subject to judicial review.

K. In no event shall the failure to comply with the requirements of subsection F of this section be deemed mere harmless error for the purposes of § 2.2-4027.

L. This section shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

§ 2.2-4018. Exemptions from operation of Article 3.

The following agency actions otherwise subject to this chapter shall be exempted from the operation of this article.

1. The assessment of taxes or penalties and other rulings in individual cases in connection with the administration of the tax laws.

2. The award or denial of claims for workers' compensation.

3. The grant or denial of public assistance *or social services*.

4. Temporary injunctive or summary orders authorized by law.

5. The determination of claims for unemployment compensation or special unemployment.

6. The suspension of any license, certificate, registration or authority granted any person by the Department of Health Professions or the Department of Professional and Occupational Regulation for the dishonor, by a bank or financial institution named, of any check, money draft or similar instrument used in payment of a fee required by statute or regulation.

§ 2.2-4025. Exemptions operation of this article; limitations.

A. This article shall not apply to any agency action that (i) is placed beyond the control of the courts by constitutional or statutory provisions expressly precluding court review, (ii) involves solely the internal management or routine of an agency, (iii) is a decision resting entirely upon an inspection, test, or election save as to want of authority therefor or claim of arbitrariness or fraud therein, (iv) is a case in which the agency is acting as an agent for a court, or (v) encompasses matters subject by law to a trial de novo in any court.

B. ~~Appeals from decisions of the Governor's Employment and Training Department otherwise subject to this chapter shall be exempted from the operation of this article.~~

~~C.~~ The provisions of this article, however, shall apply to case decisions regarding the grant or denial of ~~aid to dependent children~~ *Temporary Assistance for Needy Families*, Medicaid, food stamps, general relief, auxiliary grants, or state-local hospitalization. However, no appeal may be brought regarding the adequacy of standards of need and payment levels for public assistance *and social services* programs. Notwithstanding the provisions of § 2.2-4027, the review shall be based solely upon the agency record, and the court shall be limited to ascertaining whether there was evidence in the agency record to support the case decision of the agency acting as the trier of fact. If the court finds in favor of the party complaining of agency action, the court shall remand the case to the agency for further proceedings. The validity of any statute, regulation, standard or policy, federal or state, upon which the action of the agency was based shall not be subject to review by the court. No intermediate relief shall be granted under § 2.2-4028.

§ 2.2-4345. Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations.

A. The following public bodies may enter into contracts without competitive sealed bidding or competitive negotiation:

1. (For expiration date - See note) The Director of the Department of Medical Assistance Services for special services provided for eligible recipients pursuant to subsection E of § 32.1-325, provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

1. (Delayed effective date - See note) The Director of the Department of Medical Assistance Services for special services provided for eligible recipients pursuant to subsection H of § 32.1-325, provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

2. (Effective until July 1, 2003) The State Health Commissioner for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the development of a methodology to measure the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1, if the Commissioner has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination. Such agreements and contracts shall be based on competitive principles.

3. The Virginia Code Commission when procuring the services of a publisher, pursuant to §§ 30-146 and 30-148, to publish the Code of Virginia or the Virginia Administrative Code.

4. The Department of Alcoholic Beverage Control for the purchase of alcoholic beverages.

5. The Department for the Aging, for the administration of elder rights programs, with (i) nonprofit Virginia corporations granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code with statewide experience in Virginia in conducting a state long-term care ombudsman program or (ii) designated area agencies on aging.

6. The Department of Health for (a) child restraint devices, pursuant to § 46.2-1097; (b) health care services with Virginia corporations granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services in a community (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge; or (c) contracts with laboratories providing cytology and related services if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

7. Virginia Correctional Enterprises, when procuring materials, supplies, or services for use in and support of its production facilities, provided the procurement is accomplished using procedures that ensure as efficient use of funds as practicable and, at a minimum, includes obtaining telephone quotations. Such procedures shall require documentation of the basis for awarding contracts under this section.

8. The Virginia Baseball Stadium Authority for the operation of any facilities developed under the provisions of Chapter 58 (§ 15.2-5800 et seq.) of Title 15.2, including contracts or agreements with respect to the sale of food, beverages and souvenirs at such facilities.

9. With the consent of the Governor, the Jamestown-Yorktown Foundation for the promotion of tourism through marketing with private entities provided a demonstrable cost savings, as reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or contracts are based on competitive principles.

10. The Chesapeake Hospital Authority in the exercise of any power conferred under Chapter 271, as amended, of the Acts of Assembly of 1966.

11. The Hospital Authority of Norfolk in the exercise of any power conferred under Chapter 53 (§ 15.2-5300 et seq.) of Title 15.2. The Authority shall not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

12. The Patrick Hospital Authority sealed in the exercise of any power conferred under the Acts of Assembly of 2000.

13. Public bodies for insurance or electric utility services if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

14. Public bodies administering public assistance *and social services* programs as defined in § ~~63.1-87,~~ ~~the~~ ~~fuel~~ ~~assistance~~ ~~program~~ *63.2-100*, community services boards as defined in § 37.1-1, or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (§ 2.2-5200 et seq.) or the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq.) for goods or personal services for direct use by the recipients of such programs if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 2.2-4303.

B. No contract for the construction of any building or for an addition to or improvement of an existing building by any local government or subdivision of local government for which state funds of not more than $30,000 in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under of subsection D of § 2.2-4303. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter.

§ 15.2-412. Local board of social services and local director of social services.

The board of county supervisors shall select three qualified citizens of the county, one of whom may be a member of the board of county supervisors, who shall constitute the ~~county~~ *local* board of ~~public welfare~~ *social services*. Such board shall, insofar as not inconsistent with this form of county organization and government, exercise all the powers conferred, and perform all the duties imposed,

upon ~~county~~ *local* boards of ~~public welfare~~ *social services* by law. There also shall be a ~~superintendent of public welfare~~ *local director of social services* who shall be chosen by the board of county supervisors, or by the ~~county~~ *local* board of ~~public welfare~~ *social services* if the board of county supervisors so provides, from a list of eligibles furnished by the Director of the Department of Social Services. He shall, insofar as consistent with this form of county organization and government, exercise the powers conferred and perform the duties imposed upon ~~superintendents of public welfare~~ *local directors of social services* by general law. The ~~county~~ *local* board of ~~public welfare~~ *social services* and the ~~superintendent of public welfare~~ *local director of social services* shall also perform such other duties as required by the board of county supervisors.

§ 15.2-518. Departments of the county.

The activities or functions of the county shall, with the exceptions herein provided, be distributed among the following general divisions or departments:

1. Department of finance.
2. Department of ~~public welfare or~~ social services.
3. Department of law enforcement.
4. Department of education.
5. Department of records.
6. Department of health.

The board may establish any of the following additional departments, and such other departments as it deems necessary to the proper conduct of the business of the county:

1. Department of assessments.
2. Department of public works.

Any activity which is unassigned by this form of county organization and government shall, upon recommendation of the county executive, be assigned by the board to the appropriate department. The board may further, upon recommendation of the county executive, reassign, transfer, rename or combine any county functions, activities or departments.

§ 15.2-527. Department of social services.

The ~~superintendent of public welfare or~~ *local director of* social services shall be head of the department of ~~public welfare or~~ social services, and shall be chosen from a list of eligibles furnished by the Commissioner of Social Services. He shall have charge of poor relief and charitable institutions; may, at the discretion of the board, have charge of parks and playgrounds; shall exercise the powers conferred and perform the duties imposed by general law upon the ~~county~~ *local* board of ~~public welfare or~~ social services, not inconsistent herewith; and shall perform such other duties the board imposes upon him.

A ~~county~~ *local* board of ~~public welfare or~~ social services shall be appointed pursuant to the provisions of § ~~63.1-41~~ *63.2-303*.

§ 15.2-1231. Centralized competitive purchasing by chief administrative officer.

A. The governing body of any county having a chief administrative officer may provide for the centralized competitive purchasing of all supplies, equipment, materials and commodities for all departments, officers and employees of the county, and for the county school board and the *local* board of ~~public welfare or~~ social services. Such purchasing shall be done by the chief administrative officer under the supervision of the governing body of the county and shall be accomplished in accordance with Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2.

B. Such governing bodies may establish and maintain such systems of bookkeeping, accounting and controls as are necessary to the proper operation of such system of competitive purchasing and to establish such storage facilities as are necessary therefor.

C. Such governing bodies may require all departments to obtain their supplies, equipment, materials and commodities from the chief administrative officer, on requisitions prescribed by the governing body and to charge such departments therefor.

§ 15.2-1541.1. Authority of county administrator to maintain centralized system of accounting.

A county administrator shall maintain a centralized system of accounting for the county, including the county school board and the local board of ~~public welfare or~~ social services, when such centralized system of accounting is authorized by the governing body under the provisions of § 30-137.

TITLE 15.2.

CHAPTER 28.1.

PILOT PROGRAMS FOR THE DELIVERY OF HUMAN SERVICES.

§ 15.2-2811. "Human services" defined.

For the purposes of this chapter, "human services" shall mean any service provided by the Commonwealth or a county or city, or jointly by the two, to an individual or family for his or their physical, mental or economic well-being.

§ 15.2-2812. Governor may authorize certain counties or cities to develop and implement pilot

programs.

The Governor is hereby empowered to authorize certain counties or cities in this Commonwealth, not to exceed five, to develop and implement a pilot program for the delivery of human services and the administration of such a delivery system to provide for the most efficient and economical manner of delivering human services to the individual or family and to eliminate the difficulty of an individual or family with multiple needs obtaining the available and necessary human services.

§ 15.2-2813. Power to change existing regulations and request changes in federal regulations.

1. The Governor and the several boards and commissions empowered to adopt regulations are hereby further empowered to change, alter or revise the regulations of any state agency in order to assure the proper functioning of the pilot program.

2. The Governor may also, on behalf of a state agency or locality, make requests to any agency or instrumentality of the federal government for exceptions to or variances from regulations governing the administration of the use of funds for human services programs.

§ 15.2-2814. Governor to adopt regulations.

The Governor shall adopt regulations concerning programs, budget and administration to be used as guidelines for counties and cities desiring to establish a pilot program in human services delivery. These regulations should provide for evaluating the effectiveness of such a pilot program.

§ 15.2-2815. No program established unless requested by local governing body.

No pilot program shall be established unless such program has been requested by a resolution of the governing body of the county or city wherein the program will be located.

§ 15.2-2816. Cooperation of state agencies.

All state agencies shall cooperate with the Governor and the local governing body of the county or city wherein the pilot program is located in carrying out the purposes of this chapter. The Governor may consult from time to time with the directors and commissioners of state agencies involved and with the appropriate boards and commissions.

§ 15.2-2817. Cost of administering programs.

The cost of administering such pilot projects shall be determined by the appropriate state agencies and the counties and cities wherein a pilot program is located and shall have the approval of the Governor.

§ 16.1-69.53. Definitions; construction of references to period of years.

As used in this article, the following terms shall have the following meanings:

"Court records" shall include case records, financial records and administrative records as defined in this section.

"Case records" shall mean all documents, dockets and indices.

"Documents" shall mean all motions for judgment, bills of complaint, answers, bills of particulars, other pleadings, interrogatories, motions in writing, warrants, summonses, petitions, proof of service, witness summonses and subpoenas, documents received in evidence, transcripts, orders, judgments, writs, and any other similar case-related records and papers in the possession of the district courts and filed with the pleadings in the case.

"Financial records" shall mean all papers and records related to the receipt and disbursement of money by the district court.

"Administrative records" shall mean all other court papers and records not otherwise defined.

Whenever a reference to a period of years for the retention of documents is made in this section, it shall be construed to commence on January 2 of the first year following (i) the final adjudication of a civil case or (ii) the final disposition in all other cases, unless otherwise specified herein. In foster care cases, the final disposition date is the date of transfer of custody to a local board of ~~public welfare or~~ social services or a child welfare agency.

§ 16.1-246. When and how child may be taken into immediate custody.

No child may be taken into immediate custody except:

A. With a detention order issued by the judge, the intake officer or the clerk, when authorized by the judge, of the juvenile and domestic relations district court in accordance with the provisions of this law or with a warrant issued by a magistrate; or

B. When a child is alleged to be in need of services or supervision and (i) there is a clear and substantial danger to the child's life or health or (ii) the assumption of custody is necessary to ensure the child's appearance before the court; or

C. When, in the presence of the officer who makes the arrest, a child has committed an act designated a crime under the law of this Commonwealth, or an ordinance of any city, county, town or service district, or under federal law and the officer believes that such is necessary for the protection of the public interest; or

C1. When a child has committed a misdemeanor offense involving (i) shoplifting in violation of § 18.2-103, (ii) assault and battery or (iii) carrying a weapon on school property in violation of

§ 18.2-308.1 and, although the offense was not committed in the presence of the officer who makes the arrest, the arrest is based on probable cause on reasonable complaint of a person who observed the alleged offense; or

D. When there is probable cause to believe that a child has committed an offense which if committed by an adult would be a felony; or

E. When a law-enforcement officer has probable cause to believe that a person committed to the Department of Juvenile Justice as a child has run away or that a child has escaped from a jail or detention home; or

F. When a law-enforcement officer has probable cause to believe a child has run away from a residential, child-caring facility or home in which he had been placed by the court, the local department of ~~public welfare or~~ social services or a licensed child welfare agency; or

G. When a law-enforcement officer has probable cause to believe that a child (i) has run away from home or (ii) is without adult supervision at such hours of the night and under such circumstances that the law-enforcement officer reasonably concludes that there is a clear and substantial danger to the child's welfare; or

H. When a child is believed to be in need of inpatient treatment for mental illness as provided in § 16.1-340.

§ 16.1-260. Intake; petition; investigation.

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection H of this section and in § 16.1-259. The form and content of the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support for a child. Complaints, requests and the processing of petitions to initiate a case shall be the responsibility of the intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own motion with the clerk, (ii) the Department of Social Services may file support petitions on its own motion with the clerk, and (iii) any attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject of the petition is a child alleged to be in need of services, in need of supervision or delinquent. Complaints alleging abuse or neglect of a child shall be referred initially to the local department of ~~public welfare or~~ social services in accordance with the provisions of Chapter ~~12.1~~ *15* (§ ~~63.1-248.1~~ *63.2-1500* et seq.) of Title ~~63.1~~ *63.2*. Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is receiving child support services or public assistance. No individual who is receiving support services or public assistance shall be denied the right to file a petition or motion to establish, modify or enforce an order for support of a child. If the petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance of process, shall forward a copy of the petition or motion, together with notice of the court date, to the Division of Child Support Enforcement.

B. The appearance of a child before an intake officer may be by (i) personal appearance before the intake officer or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, an intake officer may exercise all powers conferred by law. All communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

When the court service unit of any court receives a complaint alleging facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241, the unit, through an intake officer, may proceed informally to make such adjustment as is practicable without the filing of a petition or may authorize a petition to be filed by any complainant having sufficient knowledge of the matter to establish probable cause for the issuance of the petition.

An intake officer may proceed informally on a complaint alleging a child is in need of services, in need of supervision or delinquent only if the juvenile (i) is not alleged to have committed a violent juvenile felony; (ii) has not previously been proceeded against informally or adjudicated in need of supervision or delinquent; or (iii) is not the subject of a complaint filed pursuant to § 22.1-258 and the attendance officer has provided documentation to the intake officer or magistrate that the relevant school division has complied with the provisions of § 22.1-258. A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is in need of supervision or delinquent shall be filed with the court if the juvenile had previously been proceeded against informally by intake or had been adjudicated in need of supervision or delinquent.

Whenever informal action is taken as provided in this subsection on a complaint alleging that a child

is in need of services, in need of supervision or delinquent, the intake officer shall (i) develop a plan for the juvenile, which may include restitution and the performance of community service, based upon community resources and the circumstances which resulted in the complaint, (ii) create an official record of the action taken by the intake officer and file such record in the juvenile's case file, and (iii) advise the juvenile and the juvenile's parent, guardian or other person standing in loco parentis and the complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241 will result in the filing of a petition with the court.

C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody, visitation or support of a child is the subject of controversy or requires determination, (ii) a person has deserted, abandoned or failed to provide support for any person in violation of law, (iii) a child or such child's parent, guardian, legal custodian or other person standing in loco parentis is entitled to treatment, rehabilitation or other services which are required by law, or (iv) family abuse has occurred and a protective order is being sought pursuant to §§ 16.1-253.1, 16.1-253.4 or § 16.1-279.1. If any such complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to be abused, neglected, in need of services, in need of supervision or delinquent, if the intake officer believes that probable cause does not exist, or that the authorization of a petition will not be in the best interest of the family or juvenile or that the matter may be effectively dealt with by some agency other than the court, he may refuse to authorize the filing of a petition.

D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be in need of supervision have utilized or attempted to utilize treatment and services available in the community and have exhausted all appropriate nonjudicial remedies which are available to them. When the intake officer determines that the parties have not attempted to utilize available treatment or services or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility or individual to receive treatment or services, and a petition shall not be filed. Only after the intake officer determines that the parties have made a reasonable effort to utilize available community treatment or services may he permit the petition to be filed.

E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the juvenile may be detained pursuant to the warrant issued in accordance with this subsection. If the intake officer refuses to authorize a petition relating to a child in need of services or in need of supervision, a status offense, or a misdemeanor other than Class 1, his decision is final.

Upon delivery to the juvenile court of a warrant issued pursuant to subdivision 2 of § 16.1-256, the intake officer shall accept and file a petition founded upon the warrant.

F. The intake officer shall notify the attorney for the Commonwealth of the filing of any petition which alleges facts of an offense which would be a felony if committed by an adult.

G. After a petition is filed alleging that a juvenile committed an act which would be a crime if committed by an adult, the intake officer shall, as soon as practicable, provide notice by telephone of the filing of the petition and the nature of the offense to the superintendent of the school division in which the petitioner alleges the juvenile is or should be enrolled, provided the violation involves:

1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299 et seq.), or 7 (§ 18.2-308 et seq.) of Chapter 7 of Title 18.2;

2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;

4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

7. Arson and related crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2;

8. Burglary and related offenses, pursuant to §§ 18.2-89 through 18.2-93; or

9. Robbery pursuant to § 18.2-58.

Promptly after filing a petition the intake officer shall also mail notice, by first-class mail, to the

superintendent. The failure to provide information regarding the school in which the juvenile who is the subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

The information provided to a division superintendent pursuant to this section may be disclosed only as provided in § 16.1-305.2.

H. The filing of a petition shall not be necessary:

1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and other pedestrian offenses, game and fish laws or a violation of the ordinance of any city regulating surfing or any ordinance establishing curfew violations or animal control violations. In such cases the court may proceed on a summons issued by the officer investigating the violation in the same manner as provided by law for adults. Additionally, an officer investigating a motor vehicle accident may, at the scene of the accident or at any other location where a juvenile who is involved in such an accident may be located, proceed on a summons in lieu of filing a petition.

2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subdivision H of § 16.1-241.

3. In the case of a violation of § 18.2-266 or § 29.1-738, or the commission of any other alcohol-related offense, provided the juvenile is released to the custody of a parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of a parent or legal guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or legal guardian to appear before the court with the juvenile. Disposition of the charge shall be in the manner provided in § 16.1-278.8 or § 16.1-278.9. If the juvenile so charged with a violation of § 18.2-266 or § 29.1-738 refuses to provide a sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or § 29.1-738.2, the provisions of these sections shall be followed except that the magistrate shall authorize execution of the warrant as a summons. The summons shall be served on a parent or legal guardian and the juvenile, and a copy of the summons shall be forwarded to the court in which the violation of § 18.2-266 or § 29.1-738 is to be tried.

4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as provided by law for adults provided that notice of the summons to appear is mailed by the investigating officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

I. Failure to comply with the procedures set forth in this section shall not divest the juvenile court of the jurisdiction granted it in § 16.1-241.

§ 16.1-278.2. Abused, neglected, or abandoned children or children without parental care.

A. Within seventy-five days of a preliminary removal order hearing held pursuant to § 16.1-252 or a hearing on a preliminary protective order held pursuant to § 16.1-253, a dispositional hearing shall be held if the court found abuse or neglect and (i) removed the child from his home or (ii) entered a preliminary protective order. Notice of the dispositional hearing shall be provided to the child's parent, guardian, legal custodian or other person standing in loco parentis in accordance with § 16.1-263. The hearing shall be held and a dispositional order may be entered, although a parent, guardian, legal custodian or person standing in loco parentis fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort. Notice shall also be provided to the local department of social services, the guardian ad litem and, if appointed, the court-appointed special advocate.

If a child is found to be ~~(i)~~ *(a)* abused or neglected; ~~(ii)~~ *(b)* at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in his care; or ~~(iii)~~ *(c)* abandoned by his parent or other custodian, or without parental care and guardianship because of his parent's absence or physical or mental incapacity, the juvenile court or the circuit court may make any of the following orders of disposition to protect the welfare of the child:

1. Enter an order pursuant to the provisions of § 16.1-278;

2. Permit the child to remain with his parent, subject to such conditions and limitations as the court may order with respect to such child and his parent or other adult occupant of the same dwelling;

3. Prohibit or limit contact as the court deems appropriate between the child and his parent or other adult occupant of the same dwelling whose presence tends to endanger the child's life, health or normal development. The prohibition may exclude any such individual from the home under such conditions as the court may prescribe for a period to be determined by the court but in no event for longer than 180 days from the date of such determination. A hearing shall be held within 150 days to determine further disposition of the matter ~~which~~ *that* may include limiting or prohibiting contact for another 180 days;

4. Permit the local board of social services or a public agency designated by the community policy

and management team to place the child, subject to the provisions of § 16.1-281, in suitable family homes, child-caring institutions, residential facilities, or independent living arrangements with legal custody remaining with the parents or guardians. The local board or public agency and the parents or guardians shall enter into an agreement which shall specify the responsibilities of each for the care and control of the child. The board or public agency ~~which~~ *that* places the child shall have the final authority to determine the appropriate placement for the child.

Any order allowing a local board or public agency to place a child where legal custody remains with the parents or guardians as provided in this section shall be entered only upon a finding by the court that reasonable efforts have been made to prevent placement out of the home and that continued placement in the home would be contrary to the welfare of the child; and the order shall so state.

5. After a finding that there is no less drastic alternative, transfer legal custody, subject to the provisions of § 16.1-281, to any of the following:

a. A relative or other interested individual subject to the provisions of subsection A1 of this section;

b. A child welfare agency, private organization or facility ~~which~~ *that* is licensed or otherwise authorized by law to receive and provide care for such child; however, a court shall not transfer legal custody of an abused or neglected child to an agency, organization or facility out of the Commonwealth without the approval of the Commissioner of Social Services; or

c. The local board of ~~public welfare or~~ social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction. The local board shall accept the child for care and custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction, the local board may be required to accept a child for a period not to exceed fourteen days without prior notice or an opportunity to be heard if the judge entering the placement order describes the emergency and the need for such temporary placement in the order. Nothing in this section shall prohibit the commitment of a child to any local board of ~~public welfare or~~ social services in the Commonwealth when the local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child.

Any order authorizing removal from the home and transferring legal custody of a child to a local board of ~~public welfare or~~ social services as provided in this section shall be entered only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child; and the order shall so state.

6. Transfer legal custody pursuant to subdivision 5 of this section and order the parent to participate in such services and programs or to refrain from such conduct as the court may prescribe; or

7. Terminate the rights of the parent pursuant to § 16.1-283.

A1. Any order transferring custody of the child to a relative or other interested individual pursuant to subdivision *A* 5 a ~~of subsection A of this section~~ shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative or other interested individual is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative or other interested individual should further provide for, as appropriate, any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

B. If the child has been placed in foster care, at the dispositional hearing the court shall review the foster care plan for the child filed in accordance with § 16.1-281 by the local department of social services, a public agency designated by the community policy and management team which places a child through an agreement with the parents or guardians where legal custody remains with the parents or guardians, or child welfare agency.

C. Any preliminary protective orders entered on behalf of the child shall be reviewed at the dispositional hearing and may be incorporated, as appropriate, in the dispositional order.

D. A dispositional order entered pursuant to this section is a final order from which an appeal may be taken in accordance with § 16.1-296.

§ 16.1-278.4. Children in need of services.

If a child is found to be in need of services or a status offender, the juvenile court or the circuit court may make any of the following orders of disposition for the supervision, care and rehabilitation of the child:

1. Enter an order pursuant to the provisions of § 16.1-278.

2. Permit the child to remain with his parent subject to such conditions and limitations as the court may order with respect to such child and his parent.

3. Order the parent with whom the child is living to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child and his parent.

4. Beginning July 1, 1992, in the case of any child fourteen years of age or older, where the court finds that the child is not able to benefit appreciably from further schooling, the court may excuse the child from further compliance with any legal requirement of compulsory school attendance as provided under § 22.1-254 or authorize the child, notwithstanding the provisions of any other law, to be employed in any occupation which is not legally declared hazardous for children under the age of eighteen.

5. Permit the local board of social services or a public agency designated by the community policy and management team to place the child, subject to the provisions of § 16.1-281, in suitable family homes, child caring-institutions, residential facilities, or independent living arrangements with legal custody remaining with the parents or guardians. The local board or public agency and the parents or guardians shall enter into an agreement which shall specify the responsibilities of each for the care and control of the child. The board or public agency ~~which~~ *that* places the child shall have the final authority to determine the appropriate placement for the child.

Any order allowing a local board or public agency to place a child where legal custody remains with the parents or guardians as provided in this section shall be entered only upon a finding by the court that reasonable efforts have been made to prevent placement out of the home and that continued placement in the home would be contrary to the welfare of the child, and the order shall so state.

6. Transfer legal custody to any of the following:

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

b. A child welfare agency, private organization or facility ~~which~~ *that* is licensed or otherwise authorized by law to receive and provide care for such child. The court shall not transfer legal custody of a child in need of services to an agency, organization or facility out of the Commonwealth without the approval of the Commissioner of Social Services; or

c. The local board of ~~public welfare or~~ social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction. The local board shall accept the child for care and custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction, the local board may be required to accept a child for a period not to exceed fourteen days without prior notice or an opportunity to be heard if the judge entering the placement order describes the emergency and the need for such temporary placement in the order. Nothing in this subdivision shall prohibit the commitment of a child to any local board of ~~public welfare or~~ social services in the Commonwealth when the local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child.

Any order authorizing removal from the home and transferring legal custody of a child to a local board of ~~public welfare or~~ social services as provided in this subdivision shall be entered only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, and the order shall so state.

7. Require the child to participate in a public service project under such conditions as the court prescribes.

§ 16.1-278.18. Money judgments.

A. Each juvenile and domestic relations district court may enter judgment for money in any amount for arrears of support and maintenance of any person in cases in which (i) the court has previously acquired personal jurisdiction over all necessary parties or a proceeding in which such jurisdiction has been obtained has been referred or transferred to the court by a circuit court or another juvenile and domestic relations district court and (ii) payment of such money has been previously ordered by the court, a circuit court, or another juvenile and domestic relations district court. However, no judgment shall be entered unless the motion of a party, a probation officer, a ~~superintendent of public welfare~~ *local director of social services*, or the court's own motion is duly served on the person against whom judgment is sought, in accordance with the applicable provisions of law relating to notice when proceedings are reopened. The motion shall contain a caption stating the name of the court, the title of the action, the names of all parties and the address of the party against whom judgment is sought, the amount of arrearage for which judgment is sought, and the date and time when such judgment will be sought. No support order may be retroactively modified. It may, however, be modified with respect to any period during which there is a pending petition for modification, but only from the date that notice of such petition has been given to the responding party.

B. The judge or clerk of the court shall, upon written request of the obligee under a judgment

entered pursuant to this section, certify and deliver an abstract of that judgment to the obligee or Department of Social Services, who may deliver the abstract to the clerk of the circuit court having jurisdiction over appeals from juvenile and domestic relations district court. The clerk shall issue executions of the judgment.

C. If the judgment amount does not exceed the jurisdictional limits of *subdivision (1) of* § 16.1-77 ~~(1)~~, exclusive of interest and any attorneys' fees, an abstract of any such judgment entered pursuant to this section may be delivered to the clerk of the general district court of the same judicial district. The clerk shall issue executions upon the judgment.

D. Arrearages accumulated prior to July 1, 1976, shall also be subject to the provisions of this section.

§ 16.1-281. Foster care plan.

A. In any case in which (i) a local board of social services or a public agency designated by the community policy and management team places a child through an agreement with the parents or guardians where legal custody remains with the parents or guardian, or (ii) legal custody of a child is given to a local board of ~~public welfare or~~ social services or a child welfare agency, the *local* department of ~~public welfare or~~ social services, the public agency designated or child welfare agency or the family assessment and planning team established pursuant to § 2.2-5207 shall prepare a foster care plan for such child, as described hereinafter. The individual family service plan developed by the family assessment and planning team pursuant to § 2.2-5208 may be accepted by the court as the foster care plan if it meets the requirements of this section. The representatives of such department, agency, or team shall consult with the child's parents, except when parental rights have been terminated, and any other person or persons standing in loco parentis at the time the board or child welfare agency obtained custody or the board or the public agency placed the child, concerning the matters which should be included in such plan. The department, public agency, child welfare agency or team shall file the plan with the juvenile and domestic relations district court within sixty days following the transfer of custody or the board's or public agency's placement of the child unless the court, for good cause shown, allows an extension of time, which shall not exceed an additional sixty days. However, a foster care plan shall be filed in accordance with the provisions of § 16.1-277.01 with a petition for approval of an entrustment agreement. A foster care plan need not be prepared if the child is returned to his prior family or placed in an adoptive home within sixty days following transfer of custody to the board or agency or the board's or public agency's placement of the child.

B. The foster care plan shall describe (i) the programs, care, services and other support which will be offered to the child and his parents and other prior custodians; (ii) the participation and conduct which will be sought from the child's parents and other prior custodians; (iii) the visitation and other contacts which will be permitted between the child and his parents and other prior custodians; (iv) the nature of the placement or placements which will be provided for the child; and (v) in writing and where appropriate for children age sixteen or over, the programs and services which will help the child prepare for the transition from foster care to independent living. If consistent with the child's health and safety, the plan shall be designed to support reasonable efforts which lead to the return of the child to his parents or other prior custodians within the shortest practicable time which shall be specified in the plan. The child's health and safety shall be the paramount concern of the court and the agency throughout the placement, case planning, service provision and review process.

If the department, child welfare agency or team determines that it is not reasonably likely that the child can be returned to his prior family within a practicable time, consistent with the best interests of the child, in a separate section of the plan the department, child welfare agency or team shall ~~(i)~~ *(a)* include a full description of the reasons for this conclusion; ~~(ii)~~ *(b)* determine the opportunities for placing the child with a relative or in an adoptive home; ~~(iii)~~ *(c)* design the plan to lead to the child's successful placement with a relative if a subsequent transfer of custody to the relative is planned, or in an adoptive home within the shortest practicable time, and if neither of such placements is feasible; ~~(iv)~~ *(d)* explain why independent living for a child sixteen years of age or older, permanent foster care or continued foster care is the plan for the child. "Independent living" includes the services and programs needed to assist the child in making a transition from foster care to self-sufficiency. The department or agency may include with such proposed plan a proper pleading seeking the termination of residual parental rights pursuant to § 16.1-283.

The local board or other child welfare agency having custody of the child shall not be required by the court to make reasonable efforts to reunite the child with a parent if the court finds that ~~(i)~~ *(1)* the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; ~~(ii)~~ *(2)* the parent has been convicted of an offense under the laws of this Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction which constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent

resided at the time such offense occurred or the other parent of the child; or ~~(iii)~~ *(3)* the parent has been convicted of an offense under the laws of this Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction which constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense. As used in this section "serious bodily injury" means bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty. Within thirty days of making a determination that reasonable efforts to reunite the child with the parents are not required, the court shall hold a permanency planning hearing pursuant to § 16.1-282.1.

C. A copy of the entire foster care plan shall be sent by the court to the child, if he is twelve years of age or older; the guardian ad litem for the child, the attorney for the child's parents or for any other person standing in loco parentis at the time the board or child welfare agency obtained custody or the board or public agency placed the child, to the parents or other person standing in loco parentis, and such other persons as appear to the court to have a proper interest in the plan. However, a copy of the plan shall not be sent to a parent whose parental rights regarding the child have been terminated. A copy of the plan, excluding the section of the plan describing the reasons why the child cannot be returned home and the alternative chosen, shall be sent by the court to the foster parents. A hearing shall be held for the purpose of reviewing and approving the foster care plan. The hearing shall be held within seventy-five days of (i) the child's initial foster care placement, if the child was placed through an agreement between the parents or guardians and the local department of social services, other public agency or a child welfare agency; (ii) the original preliminary removal order hearing, if the child was placed in foster care pursuant to § 16.1-252; (iii) the hearing on the petition for relief of custody, if the child was placed in foster care pursuant to § 16.1-277.02; or (iv) the dispositional hearing at which the child was placed in foster care and an order was entered pursuant to §§ 16.1-278.2, 16.1-278.3, 16.1-278.4, 16.1-278.5, 16.1-278.6 or § 16.1-278.8. However, the hearing shall be held in accordance with the provisions of § 16.1-277.01 with a petition for approval of an entrustment agreement. If the judge makes any revision in any part of the foster care plan, a copy of the changes shall be sent by the court to all persons who received a copy of the original of that part of the plan.

C1. Any order transferring custody of the child to a relative other than the child's prior family shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative should further provide for, as appropriate, any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

D. The court in which the foster care plan is filed shall be notified immediately if the child is returned to his parents or other persons standing in loco parentis at the time the board or agency obtained custody or the board or public agency placed the child.

E. Nothing in this section shall limit the authority of the juvenile judge or the staff of the juvenile court, upon order of the judge, to review the status of children in the custody of local boards of ~~public welfare or~~ social services or placed by local boards of social services or the public agency designated by the community policy and management team on its own motion. The court shall appoint an attorney to act as guardian ad litem to represent the child any time a hearing is held to review the foster care plan filed for the child or to review the child's status in foster care.

F. At the conclusion of the hearing at which the foster care plan is reviewed, the court shall schedule a foster care review hearing to be held within six months in accordance with § 16.1-282. Parties who are present at the hearing pursuant to this section shall be given notice of the date set for the foster care review hearing and parties who are not present shall be summoned as provided in § 16.1-263.

§ 16.1-294. Placing child on parole in foster home or with institution; how cost paid.

When the child is returned to the custody of the court for parole supervision by the court service unit or the local department of ~~public welfare or~~ social services for supervision, and, after a full investigation, the court is of the opinion that the child should not be placed in his home or is in need of treatment, and there are no funds available to board and maintain the child or to purchase the needed treatment services, the court service unit or the local department of ~~public welfare or~~ social services shall arrange with the Director of the Department of Juvenile Justice for the boarding of the child in a foster home or with any private institution, society or association or for the purchase of treatment services. In determining the proper placement for such a child, the Department may refer the child to the locality's family assessment and planning team for assessment and recommendation for services. The

cost of maintaining such child shall be paid monthly, according to schedules prepared and adopted by the Department, out of funds appropriated for such purposes. Treatment services for such child shall be paid from funds appropriated to the Department for such purpose.

§ 16.1-332. Orders of court; investigation, report and appointment of counsel.

If deemed appropriate the court may (i) require the local department of ~~welfare or~~ social services or any other agency or person to investigate the allegations in the petition and file a report of that investigation with the court, (ii) appoint counsel for the minor's parents or guardian, or (iii) make any other orders regarding the matter which the court deems appropriate. In any case pursuant to this article the court shall appoint counsel for the minor to serve as guardian ad litem.

§ 20-64. Proceedings instituted by petition.

Proceedings under this chapter may be instituted upon petition, verified by oath or affirmation, filed by the spouse or child or by any probation officer or by any state or local law-enforcement officer or by ~~any state or local public welfare officer~~ *the Department of Social Services* upon information received, or by any other person having knowledge of the facts, and the petition shall set forth the facts and circumstances of the case.

§ 20-88.02. Transfer of assets to qualify for assistance; liability of transferees.

A. As used in this section, "uncompensated value" means the aggregate amount by which the fair market value of all property or resources, including fractional interests, transferred by any transferor after the effective date of and subject to this section, exceeds the aggregate consideration received for such property or resources.

B. Within thirty months prior to the date on which any person receives benefits from any program of public assistance *or social services* as defined in § ~~63.1-87~~ *63.2-100*, if such person has transferred any property or resources resulting in uncompensated value, the transferee of such property or resources shall be liable to repay the Commonwealth for benefits paid on behalf of the transferor up to the amount of that uncompensated value less $25,000.

C. In their discretion, the heads of the agencies which administer the appropriate program or programs of public assistance may petition the circuit court having jurisdiction over the property or over the transferee for an order requiring repayment. That order shall continue in effect, as the court may determine, for so long as the transferor receives public assistance or until the uncompensated value is completely repaid. With respect to all transfers subject to this section, a rebuttable presumption is created that the transferee acted with the intent and for the purpose of assisting the transferor to qualify for public assistance. If the presumption is rebutted, this section shall not apply and the petition shall be dismissed.

D. After reasonable investigation, the agency or agencies administering the program of public assistance shall not file any petition, and no court shall order payments under subsection B of this section if it is determined that: (i) the uncompensated value of the property transferred is $25,000 or less, (ii) that the property transferred was the home of the transferor at the time of the transfer and the transferor or any of the following individuals reside in the home: the transferor's spouse, any natural or adopted child of the transferor under the age of twenty-one years or any natural or adopted child of the transferor, regardless of age, who is blind or disabled as defined by the federal Social Security Act or the Virginia Medicaid Program, or (iii) the transferee is without financial means or that such payment would work a hardship on the transferee or his family. If the transferee does not fully cooperate with the investigating agency to determine the nature and extent of the hardship, there shall be a rebuttable presumption that no hardship exists.

§ 20-108. Revision and alteration of such decrees.

The court may, from time to time after decreeing as provided in § 20-107.2, on petition of either of the parents, or on its own motion or upon petition of any probation officer or ~~superintendent of public welfare~~ *the Department of Social Services*, which petition shall set forth the reasons for the relief sought, revise and alter such decree concerning the care, custody, and maintenance of the children and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children may require. The intentional withholding of visitation of a child from the other parent without just cause may constitute a material change of circumstances justifying a change of custody in the discretion of the court.

No support order may be retroactively modified, but may be modified with respect to any period during which there is a pending petition for modification, but only from the date that notice of such petition has been given to the responding party.

§ 20-108.2. Guideline for determination of child support.

A. There shall be a rebuttable presumption in any judicial or administrative proceeding for child support under this title or Title 16.1 or ~~63.1~~ *63.2*, including cases involving split custody or shared custody, that the amount of the award which would result from the application of the guidelines set forth in this section is the correct amount of child support to be awarded. In order to rebut the

presumption, the court shall make written findings in the order as set out in § 20-108.1, which findings may be incorporated by reference, that the application of the guidelines would be unjust or inappropriate in a particular case as determined by relevant evidence pertaining to the factors set out in §§ 20-107.2 and 20-108.1. The Department of Social Services shall set child support at the amount resulting from computations using the guidelines set out in this section pursuant to the authority granted to it in Chapter ~~13~~ *19* (§ ~~63.1-249~~ *63.2-1900* et seq.) of Title ~~63.1~~ *63.2* and subject to the provisions of § ~~63.1-264.2~~ *63.2-1918*.

B. For purposes of application of the guideline, a basic child support obligation shall be computed using the schedule set out below. For combined monthly gross income amounts falling between amounts shown in the schedule, basic child support obligation amounts shall be extrapolated. However, unless one of the following exemptions applies where the sole custody child support obligation as computed pursuant to subdivision G. 1. is less than $65 per month, there shall be a presumptive minimum child support obligation of $65 per month payable by the payor parent. Exemptions from this presumptive minimum monthly child support obligation shall include: parents unable to pay child support because they lack sufficient assets from which to pay child support and who, in addition, are institutionalized in a psychiatric facility; are imprisoned with no chance of parole; are medically verified to be totally and permanently disabled with no evidence of potential for paying child support, including recipients of Supplemental Security Income (SSI); or are otherwise involuntarily unable to produce income. "Number of children" means the number of children for whom the parents share joint legal responsibility and for whom support is being sought.

SCHEDULE OF MONTHLY BASIC CHILD SUPPORT OBLIGATIONS

COMBINED MONTHLY GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
0-599	65	65	65	65	65	65
600	110	111	113	114	115	116
650	138	140	142	143	145	146
700	153	169	170	172	174	176
750	160	197	199	202	204	206
800	168	226	228	231	233	236
850	175	254	257	260	263	266
900	182	281	286	289	292	295
950	189	292	315	318	322	325
1000	196	304	344	348	351	355
1050	203	315	373	377	381	385
1100	210	326	402	406	410	415
1150	217	337	422	435	440	445
1200	225	348	436	465	470	475
1250	232	360	451	497	502	507
1300	241	373	467	526	536	542
1350	249	386	483	545	570	576
1400	257	398	499	563	605	611
1450	265	411	515	581	633	645
1500	274	426	533	602	656	680
1550	282	436	547	617	672	714
1600	289	447	560	632	689	737
1650	295	458	573	647	705	754
1700	302	468	587	662	721	772
1750	309	479	600	676	738	789
1800	315	488	612	690	752	805
1850	321	497	623	702	766	819
1900	326	506	634	714	779	834
1950	332	514	645	727	793	848
2000	338	523	655	739	806	862
2050	343	532	666	751	819	877
2100	349	540	677	763	833	891
2150	355	549	688	776	846	905

1030	2200	360	558	699	788	860	920
1031	2250	366	567	710	800	873	934
1032	2300	371	575	721	812	886	948
1033	2350	377	584	732	825	900	963
1034	2400	383	593	743	837	913	977
1035	2450	388	601	754	849	927	991
1036	2500	394	610	765	862	940	1006
1037	2550	399	619	776	874	954	1020
1038	2600	405	627	787	886	967	1034
1039	2650	410	635	797	897	979	1048
1040	2700	415	643	806	908	991	1060
1041	2750	420	651	816	919	1003	1073
1042	2800	425	658	826	930	1015	1085
1043	2850	430	667	836	941	1027	1098
1044	2900	435	675	846	953	1039	1112
1045	2950	440	683	856	964	1052	1125
1046	3000	445	691	866	975	1064	1138
1047	3050	450	699	876	987	1076	1152
1048	3100	456	707	886	998	1089	1165
1049	3150	461	715	896	1010	1101	1178
1050	3200	466	723	906	1021	1114	1191
1051	3250	471	732	917	1032	1126	1205
1052	3300	476	740	927	1044	1139	1218
1053	3350	481	748	937	1055	1151	1231
1054	3400	486	756	947	1067	1164	1245
1055	3450	492	764	957	1078	1176	1258
1056	3500	497	772	967	1089	1189	1271
1057	3550	502	780	977	1101	1201	1285
1058	3600	507	788	987	1112	1213	1298
1059	3650	512	797	997	1124	1226	1311
1060	3700	518	806	1009	1137	1240	1326
1061	3750	524	815	1020	1150	1254	1342
1062	3800	530	824	1032	1163	1268	1357
1063	3850	536	834	1043	1176	1283	1372
1064	3900	542	843	1055	1189	1297	1387
1065	3950	547	852	1066	1202	1311	1402
1066	4000	553	861	1078	1214	1325	1417
1067	4050	559	871	1089	1227	1339	1432
1068	4100	565	880	1101	1240	1353	1448
1069	4150	571	889	1112	1253	1367	1463
1070	4200	577	898	1124	1266	1382	1478
1071	4250	583	907	1135	1279	1396	1493
1072	4300	589	917	1147	1292	1410	1508
1073	4350	594	926	1158	1305	1424	1523
1074	4400	600	935	1170	1318	1438	1538
1075	4450	606	944	1181	1331	1452	1553
1076	4500	612	954	1193	1344	1467	1569
1077	4550	618	963	1204	1357	1481	1584
1078	4600	624	972	1216	1370	1495	1599
1079	4650	630	981	1227	1383	1509	1614
1080	4700	635	989	1237	1395	1522	1627
1081	4750	641	997	1247	1406	1534	1641
1082	4800	646	1005	1257	1417	1546	1654
1083	4850	651	1013	1267	1428	1558	1667
1084	4900	656	1021	1277	1439	1570	1679
1085	4950	661	1028	1286	1450	1582	1692

1086	5000	666	1036	1295	1460	1593	1704
1087	5050	671	1043	1305	1471	1605	1716
1088	5100	675	1051	1314	1481	1616	1728
1089	5150	680	1058	1323	1492	1628	1741
1090	5200	685	1066	1333	1502	1640	1753
1091	5250	690	1073	1342	1513	1651	1765
1092	5300	695	1081	1351	1524	1663	1778
1093	5350	700	1088	1361	1534	1674	1790
1094	5400	705	1096	1370	1545	1686	1802
1095	5450	710	1103	1379	1555	1697	1815
1096	5500	714	1111	1389	1566	1709	1827
1097	5550	719	1118	1398	1576	1720	1839
1098	5600	724	1126	1407	1587	1732	1851
1099	5650	729	1133	1417	1598	1743	1864
1100	5700	734	1141	1426	1608	1755	1876
1101	5750	739	1148	1435	1619	1766	1888
1102	5800	744	1156	1445	1629	1778	1901
1103	5850	749	1163	1454	1640	1790	1913
1104	5900	753	1171	1463	1650	1801	1925
1105	5950	758	1178	1473	1661	1813	1937
1106	6000	763	1186	1482	1672	1824	1950
1107	6050	768	1193	1491	1682	1836	1962
1108	6100	773	1201	1501	1693	1847	1974
1109	6150	778	1208	1510	1703	1859	1987
1110	6200	783	1216	1519	1714	1870	1999
1111	6250	788	1223	1529	1724	1882	2011
1112	6300	792	1231	1538	1735	1893	2023
1113	6350	797	1238	1547	1745	1905	2036
1114	6400	802	1246	1557	1756	1916	2048
1115	6450	807	1253	1566	1767	1928	2060
1116	6500	812	1261	1575	1777	1940	2073
1117	6550	816	1267	1583	1786	1949	2083
1118	6600	820	1272	1590	1794	1957	2092
1119	6650	823	1277	1597	1801	1965	2100
1120	6700	827	1283	1604	1809	1974	2109
1121	6750	830	1288	1610	1817	1982	2118
1122	6800	834	1293	1617	1824	1990	2127
1123	6850	837	1299	1624	1832	1999	2136
1124	6900	841	1304	1631	1839	2007	2145
1125	6950	845	1309	1637	1847	2016	2154
1126	7000	848	1315	1644	1855	2024	2163
1127	7050	852	1320	1651	1862	2032	2172
1128	7100	855	1325	1658	1870	2041	2181
1129	7150	859	1331	1665	1878	2049	2190
1130	7200	862	1336	1671	1885	2057	2199
1131	7250	866	1341	1678	1893	2066	2207
1132	7300	870	1347	1685	1900	2074	2216
1133	7350	873	1352	1692	1908	2082	2225
1134	7400	877	1358	1698	1916	2091	2234
1135	7450	880	1363	1705	1923	2099	2243
1136	7500	884	1368	1712	1931	2108	2252
1137	7550	887	1374	1719	1938	2116	2261
1138	7600	891	1379	1725	1946	2124	2270
1139	7650	895	1384	1732	1954	2133	2279
1140	7700	898	1390	1739	1961	2141	2288
1141	7750	902	1395	1746	1969	2149	2297

7800	905	1400	1753	1977	2158	2305
7850	908	1405	1758	1983	2164	2313
7900	910	1409	1764	1989	2171	2320
7950	913	1414	1770	1995	2178	2328
8000	916	1418	1776	2001	2185	2335
8050	918	1423	1781	2007	2192	2343
8100	921	1428	1787	2014	2198	2350
8150	924	1432	1793	2020	2205	2357
8200	927	1437	1799	2026	2212	2365
8250	929	1441	1804	2032	2219	2372
8300	932	1446	1810	2038	2226	2380
8350	935	1450	1816	2045	2232	2387
8400	937	1455	1822	2051	2239	2395
8450	940	1459	1827	2057	2246	2402
8500	943	1464	1833	2063	2253	2410
8550	945	1468	1839	2069	2260	2417
8600	948	1473	1845	2076	2266	2425
8650	951	1478	1850	2082	2273	2432
8700	954	1482	1856	2088	2280	2440
8750	956	1487	1862	2094	2287	2447
8800	959	1491	1868	2100	2294	2455
8850	962	1496	1873	2107	2300	2462
8900	964	1500	1879	2113	2307	2470
8950	967	1505	1885	2119	2314	2477
9000	970	1509	1891	2125	2321	2484
9050	973	1514	1896	2131	2328	2492
9100	975	1517	1901	2137	2334	2498
9150	977	1521	1905	2141	2339	2503
9200	979	1524	1909	2146	2344	2509
9250	982	1527	1914	2151	2349	2514
9300	984	1531	1918	2156	2354	2520
9350	986	1534	1922	2160	2359	2525
9400	988	1537	1926	2165	2365	2531
9450	990	1541	1930	2170	2370	2536
9500	993	1544	1935	2175	2375	2541
9550	995	1547	1939	2179	2380	2547
9600	997	1551	1943	2184	2385	2552
9650	999	1554	1947	2189	2390	2558
9700	1001	1557	1951	2194	2396	2563
9750	1003	1561	1956	2198	2401	2569
9800	1006	1564	1960	2203	2406	2574
9850	1008	1567	1964	2208	2411	2580
9900	1010	1571	1968	2213	2416	2585
9950	1012	1574	1972	2218	2421	2590
10000	1014	1577	1977	2222	2427	2596

For gross monthly income between $10,000 and $20,000, add the amount of child support for $10,000 to the following percentages of gross income above $10,000:

ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
3.1%	5.1%	6.8%	7.8%	8.8%	9.5%

For gross monthly income between $20,000 and $50,000, add the amount of child support for $20,000 to the following percentages of gross income above $20,000:

ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
2%	3.5%	5%	6%	6.9%	7.8%

For gross monthly income over $50,000, add the amount of child support for $50,000 to the following percentages of gross income above $50,000:

ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
1%	2%	3%	4%	5%	6%

C. For purposes of this section, "gross income" means all income from all sources, and shall include, but not be limited to, income from salaries, wages, commissions, royalties, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits except as listed below, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, veterans' benefits, spousal support, rental income, gifts, prizes or awards.

If a parent's gross income includes disability insurance benefits, it shall also include any amounts paid to or for the child who is the subject of the order and derived by the child from the parent's entitlement to disability insurance benefits. To the extent that such derivative benefits are included in a parent's gross income, that parent shall be entitled to a credit against his or her ongoing basic child support obligation for any such amounts, and, if the amount of the credit exceeds the parent's basic child support obligations, the credit may be used to reduce arrearages.

Gross income shall be subject to deduction of reasonable business expenses for persons with income from self-employment, a partnership, or a closely held business. "Gross income" shall not include benefits from public assistance *and social services* programs as defined in § ~~63.1-87~~ *63.2-100*, federal supplemental security income benefits, or child support received. For purposes of this subsection, spousal support received shall be included in gross income and spousal support paid shall be deducted from gross income when paid pursuant to an order or written agreement.

Where there is an existing court or administrative order or written agreement relating to the child or children of a party to the proceeding, who are not the child or children who are the subject of the present proceeding, then there is a presumption that there shall be deducted from the gross income of the party subject to such order or written agreement, the amount that the party is actually paying for the support of a child or children pursuant to such order or agreement.

Where a party to the proceeding has a natural or adopted child or children in the party's household or primary physical custody, and the child or children are not the subject of the present proceeding, there is a presumption that there shall be deducted from the gross income of that party the amount as shown on the Schedule of Monthly Basic Child Support Obligations contained in subsection B that represents that party's support obligation based solely on that party's income as being the total income available for the natural or adopted child or children in the party's household or primary physical custody, who are not the subject of the present proceeding. Provided, however, that the existence of a party's financial responsibility for such a child or children shall not of itself constitute a material change in circumstances for modifying a previous order of child support in any modification proceeding. Any adjustment to gross income under this subsection shall not create or reduce a support obligation to an amount which seriously impairs the custodial parent's ability to maintain minimal adequate housing and provide other basic necessities for the child, as determined by the court.

In cases in which retroactive liability for support is being determined, the court or administrative agency may use the gross monthly income of the parties averaged over the period of retroactivity.

D. Any extraordinary medical and dental expenses for treatment of the child or children shall be added to the basic child support obligation. For purposes of this section, extraordinary medical and dental expenses are uninsured expenses in excess of $100 for a single illness or condition and shall include but not be limited to eyeglasses, prescription medication, prostheses, and mental health services whether provided by a social worker, psychologist, psychiatrist, or counselor.

E. Any costs for health care coverage as defined in § ~~63.1-250~~ *63.2-1900* and dental care coverage, when actually being paid by a parent, to the extent such costs are directly allocable to the child or children, and which are the extra costs of covering the child or children beyond whatever coverage the parent providing the coverage would otherwise have, shall be added to the basic child support obligation.

F. Any child-care costs incurred on behalf of the child or children due to employment of the custodial parent shall be added to the basic child support obligation. Child-care costs shall not exceed the amount required to provide quality care from a licensed source. When requested by the noncustodial parent, the court may require the custodial parent to present documentation to verify the costs incurred for child care under this subsection. Where appropriate, the court shall consider the willingness and availability of the noncustodial parent to provide child care personally in determining whether child-care costs are necessary or excessive.

G. 1. Sole custody support. The sole custody total monthly child support obligation shall be

established by adding (i) the monthly basic child support obligation, as determined from the schedule contained in subsection B ~~of this section~~, (ii) all extraordinary medical expenses, (iii) costs for health care coverage to the extent allowable by subsection E, and (iv) work-related child-care costs and taking into consideration all the factors set forth in subsection B of § 20-108.1. The total monthly child support obligation shall be divided between the parents in the same proportion as their monthly gross incomes bear to their monthly combined gross income. The monthly obligation of each parent shall be computed by multiplying each parent's percentage of the parents' monthly combined gross income by the total monthly child support obligation.

However, the monthly obligation of the noncustodial parent shall be reduced by the cost for health care coverage to the extent allowable by subsection E when paid directly by the noncustodial parent.

2. Split custody support. In cases involving split custody, the amount of child support to be paid shall be the difference between the amounts owed by each parent as a noncustodial parent, computed in accordance with subdivision 1 ~~of this subsection~~, with the noncustodial parent owing the larger amount paying the difference to the other parent.

For the purpose of this section and § 20-108.1, split custody shall be limited to those situations where each parent has physical custody of a child or children born of the parents, born of either parent and adopted by the other parent or adopted by both parents. For the purposes of calculating a child support obligation where split custody exists, a separate family unit exists for each parent, and child support for that family unit shall be calculated upon the number of children in that family unit who are born of the parents, born of either parent and adopted by the other parent or adopted by both parents. Where split custody exists, a parent is a custodial parent to the children in that parent's family unit and is a noncustodial parent to the children in the other parent's family unit.

3. Shared custody support.

(a) Where a party has custody or visitation of a child or children for more than ninety days of the year, as such days are defined in subdivision G 3 (c), a shared custody child support amount based on the ratio in which the parents share the custody and visitation of any child or children shall be calculated in accordance with this subdivision. The presumptive support to be paid shall be the shared custody support amount, unless a party affirmatively shows that the sole custody support amount calculated as provided in subdivision G 1 is less than the shared custody support amount. If so, the lesser amount shall be the support to be paid. For the purposes of this subsection, the following shall apply:

(i) Income share. "Income share" means a parent's percentage of the combined monthly gross income of both parents. The income share of a parent is that parent's gross income divided by the combined gross incomes of the parties.

(ii) Custody share. "Custody share" means the number of days that a parent has physical custody, whether by sole custody, joint legal or joint residential custody, or visitation, of a shared child per year divided by the number of days in the year. The actual or anticipated "custody share" of the parent who has or will have fewer days of physical custody shall be calculated for a one-year period. The "custody share" of the other parent shall be presumed to be the number of days in the year less the number of days calculated as the first parent's "custody share." For purposes of this calculation, the year may begin on such date as is determined in the discretion of the court, and the day may begin at such time as is determined in the discretion of the court. For purposes of this calculation, a day shall be as defined in subdivision G 3 (c).

(iii) Shared support need. "Shared support need" means the presumptive guideline amount of needed support for the shared child or children calculated pursuant to subsection B of this section, for the combined gross income of the parties and the number of shared children, multiplied by 1.4.

(iv) Sole custody support. "Sole custody support" means the support amount determined in accordance with subdivision G 1.

(b) Support to be paid. The shared support need of the shared child or children shall be calculated pursuant to subdivision G 3 (a) (iii). This amount shall then be multiplied by the other parent's custody share. To that sum for each parent shall be added the other parent's cost of health care coverage to the extent allowable by subsection E, plus the other parent's work-related child-care costs to the extent allowable by subsection F. This total for each parent shall be multiplied by that parent's income share. The support amounts thereby calculated that each parent owes the other shall be subtracted one from the other and the difference shall be the shared custody support one parent owes to the other, with the payor parent being the one whose shared support is the larger. Any extraordinary medical and dental expenses, to the extent allowable by subsection D, shall be shared directly by the parents in accordance with their income shares, and shall not be adjusted by the custody share. The parents shall pay their respective shares of these extraordinary medical expenses as they are incurred, and they are not added to each party's shared custody support owed to the other party. The method of payment of said allowable expenses shall be contained in the support order. When the shared support is compared to the sole

custody support to determine which is the lesser support, pursuant to subdivision G 3 (a), the extraordinary medical expenses shall not enter into either calculation.

(c) Definition of a day. For the purposes of this section, "day" means a period of twenty-four hours; however, where the parent who has the fewer number of overnight periods during the year has an overnight period with a child, but has physical custody of the shared child for less than twenty-four hours during such overnight period, there is a presumption that each parent shall be allocated one-half of a day of custody for that period.

(d) Minimum standards. Any calculation under this subdivision shall not create or reduce a support obligation to an amount which seriously impairs the custodial parent's ability to maintain minimal adequate housing and provide other basic necessities for the child. If the gross income of either party is equal to or less than 150 percent of the federal poverty level promulgated by the U.S. Department of Health and Human Services from time to time, then the shared custody support calculated pursuant to this subsection shall not be the presumptively correct support and the court may consider whether the sole custody support or the shared custody support is more just and appropriate.

(e) Support modification. When there has been an award of child support based on the shared custody formula and one parent consistently fails to exercise custody or visitation in accordance with the parent's custody share upon which the award was based, there shall be a rebuttable presumption that the support award should be modified.

(f) In the event that the shared custody support calculation indicates that the net support is to be paid to the parent who would not be the parent receiving support pursuant to the sole custody calculation, then the shared support shall be deemed to be the lesser support.

H. The Secretary of Health and Human Resources shall ensure that the guideline set out in this section is reviewed by October 31, 2001, and every three years thereafter, by a panel that includes a representative of a juvenile and domestic relations court and a circuit court, a representative of the executive branch, a member of the House of Delegates, a member of the Senate to be appointed by the chairmen of the House and Senate Committees for Courts of Justice, members of the bar, two custodial and two noncustodial parents and a child advocate. The panel shall determine the adequacy of the guideline for the determination of appropriate awards for the support of children by considering current research and data on the cost of and expenditures necessary for rearing children, and any other resources it deems relevant to such review. The panel shall report its findings to the General Assembly before it next convenes following such review.

§ 22.1-30. Certain officers may not act on school board or serve as tie breaker.

A. No state, county, city or town officer, no deputy of any such officer, no member of the governing body of a county, city or town, no employee of a school board, and no father, mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law or brother-in-law of a member of the county governing body may, during his term of office, be appointed as a member of the school board for such county, city or town or as tie breaker for such school board except:

1. Local ~~superintendents of public welfare~~ *directors of social services*~~,~~*;*

2. Commissioners in chancery~~,~~*;*

3. Commissioners of accounts~~,~~*;*

4. Registrars of vital records and health statistics~~,~~*;*

5. Notaries public~~,~~*;*

6. Clerks and employees of the federal government in the District of Columbia~~,~~*;*

7. Medical examiners~~,~~*;*

8. Officers and employees of the District of Columbia~~,~~*;*

9. In Northumberland County, oyster inspectors~~,~~*;*

10. In Lunenburg County, members of the county library board and members of the *local* board of ~~public welfare~~ *social services*~~,~~*;*

11. Auxiliary deputy sheriffs and auxiliary police officers receiving less than five dollars in annual compensation~~,~~*;*

12. Members of the town councils serving towns within Craig, Giles and Wise Counties~~,~~*;* and

13. Public defenders.

B. Nothing in this section shall be construed to prohibit the election of deputies of constitutional officers to school board membership, consistent with federal law and regulation.

§ 22.1-287. Limitations on access to records.

A. No teacher, principal or employee of any public school nor any school board member shall permit access to any records concerning any particular pupil enrolled in the school in any class to any person except under judicial process unless the person is one of the following:

1. Either parent of such pupil or such pupil; provided that a school board may require that such pupil, if he be less than eighteen years of age, as a condition precedent to access to such records, furnish written consent of his or her parent for such access;

2. A person designated in writing by such pupil if the pupil is eighteen years of age or older or by either parent of such pupil if the pupil is less than eighteen years of age;

3. The principal, or someone designated by him, of a school where the pupil attends, has attended, or intends to enroll;

4. The current teachers of such pupil;

5. State or local law-enforcement or correctional personnel, including a law-enforcement officer, probation officer, parole officer or administrator, or a member of a parole board, seeking information in the course of his duties;

6. The Superintendent of Public Instruction, a member of his staff, the division superintendent of schools where the pupil attends, has attended, or intends to enroll or a member of his staff;

7. An officer or employee of a county or city agency responsible for protective services to children, as to a pupil referred to that agency as a minor requiring investigation or supervision by that agency.

B. A parent or pupil entitled to see the records pursuant to subdivision A 1 of this section shall have access to all records relating to such pupil maintained by the school except as otherwise provided by law and need only appear in person during regular hours of the school day and request to see such records. No material concerning such pupil shall be edited or withheld except as otherwise provided by law, and the parent or pupil shall be entitled to read such material personally.

C. The restrictions imposed by this section shall not apply to the giving of information by school personnel concerning participation in athletics and other school activities, the winning of scholastic or other honors and awards, and other like information.

D. Notwithstanding the restrictions imposed by this section:

1. A division superintendent of schools may, in his discretion, provide information to the staff of a college, university, or educational research and development organization or laboratory if such information is necessary to a research project or study conducted, sponsored, or approved by the college, university, or educational research and development organization or laboratory and if no pupil will be identified by name in the information provided for research;

2. The name and address of a pupil, the record of a pupil's daily attendance, a pupil's scholastic record in the form of grades received in school subjects, the names of a pupil's parents, a pupil's date and place of birth, and the names and addresses of other schools a pupil has attended may be released to an officer or employee of the United States government seeking this information in the course of his duties when the pupil is a veteran of military service with the United States, an orphan or dependent of such veteran, or an alien;

3. The record of a pupil's daily attendance shall be open for inspection and reproduction to an employee of a local department of ~~welfare or~~ social services who needs the record to determine the eligibility of the pupil's family for public assistance *and social services*.

§ 24.2-411.2. State-designated voter registration agencies.

A. The following agencies are designated as voter registration agencies in compliance with the National Voter Registration Act (42 U.S.C. § 1973gg et seq.) and shall provide voter registration opportunities at their state, regional, or local offices, depending upon the point of service:

1. Agencies whose primary function is to provide public assistance, including agencies that provide benefits under the ~~Aid to Families with Dependent Children~~ *Temporary Assistance for Needy Families* program; Special Supplemental Food Program for Women, Infants, and Children; Medicaid program; or Food Stamps program;

2. Agencies whose primary function is to provide state-funded programs primarily engaged in providing services to persons with disabilities;

3. Armed Forces recruitment offices; and

4. The regional offices of the Department of Game and Inland Fisheries and the offices of the Virginia Employment Commission in the Northern Virginia Planning District 8.

B. The Secretary of the State Board of Elections, with the assistance of the Office of the Attorney General, shall compile and maintain a list of the specific agencies covered by subdivisions A 1 and A 2 ~~which~~ *that*, in the legal opinion of the Attorney General, must be designated to meet the requirements of the National Voter Registration Act. The Secretary of the State Board of Elections shall notify each agency of its designation and thereafter notify any agency added to or deleted from the list.

C. At each voter registration agency, the following services shall be made available on the premises of the agency:

1. Distribution of mail voter registration forms provided by the State Board of Elections;

2. Assistance to applicants in completing voter registration application forms, unless the applicant refuses assistance; and

3. Receipt of completed voter registration application forms.

D. A voter registration agency, which provides service or assistance in conducting voter registration, shall make the following services available on the premises of the agency:

1. Distribution with each application for its service or assistance, or upon admission to a facility or program, and with each recertification, readmission, renewal, or change of address form, of a voter registration application prescribed by the State Board of Elections that complies with the requirements of the National Voter Registration Act (42 U.S.C. § 1973gg et seq.).

2. Provision, as part of the voter registration process, of a form that includes:

a. The question: "If you are not registered to vote where you live now, would you like to apply to register to vote here today?"

b. If the agency provides public assistance, the statement: "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency."

c. Boxes for the applicant to check to indicate whether the applicant would like to register, declines to register to vote, or is already registered (failure to check any box being deemed to constitute a declination to register for purposes of subdivision 2 a ~~of this subsection~~), together with the statement (in close proximity to the boxes and in prominent type): "IF YOU DO NOT CHECK ANY BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME."

d. The statement: "If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek help or accept help is yours. You may fill out the application form in private."

e. The statement: "If you believe that someone has interfered with your right to register or to decline to register to vote, or your right to privacy in deciding whether to register or in applying to register to vote, you may file a complaint with the State Board of Elections." The statement shall include the address and telephone number of the State Board.

f. The following statement accompanying the form which features prominently in boldface capital letters: "WARNING: INTENTIONALLY MAKING A MATERIALLY FALSE STATEMENT ON THIS FORM CONSTITUTES THE CRIME OF ELECTION FRAUD, WHICH IS PUNISHABLE UNDER VIRGINIA LAW AS A FELONY. VIOLATORS MAY BE SENTENCED TO UP TO 10 YEARS IN PRISON, OR UP TO 12 MONTHS IN JAIL AND/or FINED UP TO $2,500."

3. Provision to each applicant who does not decline to register to vote of the same degree of assistance with regard to the completion of the voter registration application as is provided by the office with regard to the completion of its own applications, unless the applicant refuses assistance.

E. If a voter registration agency designated under subsection A of this section provides services to a person with a disability at the person's home, the agency shall provide the voter registration services as provided for in this section.

F. A person who provides services at a designated voter registration agency shall not:

1. Seek to influence an applicant's political preference;

2. Display any material indicating the person's political preference or party allegiance;

3. Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits; or

4. Disclose, except as authorized by law for official use, the social security number of any applicant for voter registration.

Any person who is aggrieved by a violation of this subsection may provide written notice of the violation to the State Board of Elections. The Board shall be authorized to cooperate with the agency to resolve the alleged violation. Nothing contained in this subsection shall prohibit an aggrieved person from filing a complaint in accordance with § 24.2-1019 against a person who commits any election law offense enumerated in §§ 24.2-1000 through 24.2-1016.

G. A completed voter registration application shall be transmitted as directed by the State Board of Elections not later than five business days after the date of receipt.

H. Each state-designated voter registration agency shall maintain such statistical records on the number of applications to register to vote as requested by the State Board of Elections.

§ 32.1-111.14. Powers of governing bodies of counties, cities and towns.

A. Upon finding as fact, after notice and public hearing, that exercise of the powers enumerated below is necessary to assure the provision of adequate and continuing emergency services and to preserve, protect and promote the public health, safety and general welfare, the governing body of any county or city is empowered to:

1. Enact an ordinance making it unlawful to operate emergency medical services vehicles or any class thereof established by the Board in such county or city without having been granted a franchise or permit to do so;

2. Grant franchises or permits to agencies based within or outside the county or city; however, any agency in operation in any county or city on June 28, 1968, that continues to operate as such, up to and including the effective date of any ordinance adopted pursuant to this section, and that submits to the governing body of the county or city satisfactory evidence of such continuing operation, shall be granted

a franchise or permit by such governing body to serve at least that part of the county or city in which the agency has continuously operated if all other requirements of this article are met;

3. Limit the number of emergency medical services vehicles to be operated within the county or city and by any agency;

4. Determine and prescribe areas of franchised or permitted service within the county or city;

5. Fix and change from time to time reasonable charges for franchised or permitted services;

6. Set minimum limits of liability insurance coverage for emergency medical services vehicles;

7. Contract with franchised or permitted agencies for transportation to be rendered upon call of a county or municipal agency or department and for transportation of bona fide indigents or persons certified by the local board of ~~public welfare or~~ social services to be public assistance *or social services* recipients; and

8. Establish other necessary regulations consistent with statutes or regulations of the Board relating to operation of emergency medical services vehicles.

B. In addition to the powers set forth above, the governing body of any county or city is authorized to provide, or cause to be provided, services of emergency medical services vehicles; to own, operate and maintain emergency medical services vehicles; to make reasonable charges for use of emergency medical services vehicles; and to contract with any agency for the services of its emergency medical services vehicles.

C. Any incorporated town may exercise, within its corporate limits only, all those powers enumerated in subsections A and B ~~of this section~~ either upon the request of a town to the governing body of the county wherein the town lies and upon the adoption by the county governing body of a resolution permitting such exercise, or after 180 days' written notice to the governing body of the county if the county is not exercising such powers at the end of such 180-day period.

D. No county ordinance enacted, or other county action taken, pursuant to powers granted herein shall be effective within an incorporated town in such county which is at the time exercising such powers until 180 days after written notice to the governing body of the town.

E. Nothing herein shall be construed to authorize any county to regulate in any manner emergency medical services vehicles owned and operated by a town or to authorize any town to regulate in any manner emergency medical services vehicles owned and operated by a county.

F. Any emergency medical services vehicles operated by a county, city or town under authority of this section shall be subject to the provisions of this article and to the regulations of the Board adopted thereunder.

§ 32.1-273. Fees for certified copies, searches of files, etc.; disposition.

A. The Board shall prescribe the fee, not to exceed eight dollars, for a certified copy of a vital record or for a search of the files or records when no copy is made and may establish a reasonable fee schedule related to its cost for information or other data provided for research, statistical or administrative purposes. Whenever any veteran or his survivor requires a certified copy of a vital record to obtain service-connected benefits, one copy of such record shall be provided directly to the Veterans Administration upon their request. No charge shall be imposed upon a veteran or his survivor for the submission of vital records directly to the Veterans Administration.

B. Fees collected under this section by the State Registrar shall be transmitted to the Comptroller for deposit. Four dollars of each fee collected by the State Registrar shall be deposited by the Comptroller into the Vital Statistics Automation Fund established pursuant to § 32.1-273.1 for so long as shall be authorized. Four dollars of each fee shall be credited to a special fund to be appropriated by the General Assembly, as it deems necessary, for the purpose of carrying out the provisions of this chapter. When the Vital Statistics Automation System is completed, no further deposits into the fund shall be made and all fees collected under this section not credited to the special fund created by this subsection shall be deposited into the general fund of the state treasury.

C. Fees collected under this section by county and city registrars shall be deposited in the general fund of the county or city except that counties or cities operating health departments pursuant to the provisions of § 32.1-31 shall forward all such fees to the Department for deposit in the cooperative local health services fund.

D. Fees assessed against local departments of social services ~~or public welfare~~ for furnished copies of vital records as needed to administer public assistance *and social services* programs, as defined in § ~~63.1-87~~ *63.2-100*, shall be payable on a quarterly basis.

§ 32.1-321.4. False statement or representation in applications for eligibility or for use in determining rights to benefits; concealment of facts; criminal penalty.

A. Any person who engages in the following activities, on behalf of himself or another, shall be guilty of larceny and, in addition to the penalties provided in §§ 18.2-95 and 18.2-96 as applicable, may be fined an amount not to exceed $10,000:

1. Knowingly and willfully making or causing to be made any false statement or misrepresentation of

a material fact in an application for eligibility, benefits or payments under medical assistance;

2. Knowingly and willfully falsifying, concealing or covering up by any trick, scheme, or device a material fact in connection with an application for eligibility, benefits or payments;

3. Knowingly and willfully concealing or failing to disclose any event affecting the initial or continued right of any individual to any benefits or payment with an intent to secure fraudulently such benefits or payment in a greater amount or quantity than is authorized or when no such benefit or payment is authorized;

4. Knowingly and willfully converting any benefits or payment received pursuant to an application for another person and receipt of benefits or payment on behalf of such other person to use other than for the health and welfare of the other person; or

5. Knowingly and willfully failing to notify the local department of ~~welfare or~~ social services, through whom medical assistance benefits were obtained, of changes in the circumstances of any recipient or applicant which could result in the reduction or termination of medical assistance services.

B. It shall be the duty of the Director of Medical Assistance Services or his designee to enforce the provisions of this section. A warrant or summons may be issued for violations of which the Director or his designee has knowledge. Trial for violation of this section shall be held in the county or city in which the application for medical assistance was made or obtained.

§ 32.1-350. Fraudulently obtaining benefits; criminal penalty.

A. Any person who engages in the following activities, on behalf of himself or another, shall be guilty of a Class 1 misdemeanor in addition to any other penalties provided by law:

1. Knowingly and willfully making or causing to be made any false statement or misrepresentation of a material fact in an application for eligibility under this program or in order to participate in or receive reimbursement from the program;

2. Knowingly and willfully concealing or failing to disclose any event affecting the initial or continued right of any individual to any benefits with an intent to secure fraudulently such benefits in a greater amount or quantity than is authorized or when no such benefit is authorized;

3. Knowingly and willfully failing to notify the local department of ~~welfare or~~ social services, through whom the benefits of this program were obtained, of changes in the circumstances of any recipient or applicant which could result in reduction or termination of the benefits;

4. Knowingly and willfully failing to provide any reports or data to the Department as required in this chapter.

B. Conviction of any provider or any employee or officer of such provider of any offense under this section shall also result in forfeiture of any payments due.

§ 37.1-98. Discharge, conditional release, and convalescent status of patients.

A. The director of a state hospital may discharge any patient after the preparation of a predischarge plan formulated in accordance with the provisions of § 37.1-197.1 by the community services board which serves the political subdivision where the patient resided prior to hospitalization or with the board located within the political subdivision the patient chooses to reside in immediately following the discharge, except one held upon an order of a court or judge for a criminal proceeding, as follows:

1. Any patient who, in his judgment, is recovered.

2. Any patient who, in his opinion, is not mentally ill.

3. Any patient who is impaired or not recovered and whose discharge, in the judgment of the director, will not be detrimental to the public welfare, or injurious to the patient.

4. Any patient who is not a proper case for treatment within the purview of this chapter.

For all individuals discharged on or after January 1, 1987, the predischarge plan shall be contained in a uniform discharge document developed by the Department and used by all state hospitals. If the individual will be housed in an assisted living facility, as defined in § ~~63.1-172~~ *63.2-100*, the plan shall so state.

B. The director may grant convalescent status to a patient in accordance with rules prescribed by the Board. The state hospital granting a convalescent status to a patient shall not be liable for his expenses during such period. Such liability shall devolve upon the relative, committee, person to whose care the patient is entrusted while on convalescent status, or the appropriate local public welfare agency of the county or city of which the patient was a resident at the time of admission. The provision of social services to the patient shall be the responsibility of the appropriate local ~~public welfare agency~~ *department of social services* as determined by policy approved by the State Board of Social Services.

C. Any patient who is discharged pursuant to subdivision A 4 ~~hereof~~ shall, if necessary for his welfare, be received and cared for by the appropriate local ~~public welfare agency~~ *department of social services*. The provision of social services to the patient shall be the responsibility of the appropriate local ~~public welfare agency~~ *department of social services* as determined by policy approved by the State Board of Social Services. Expenses incurred by the provision of public assistance to the patient, who is receiving twenty-four-hour care while in an assisted living facility licensed pursuant to ~~Chapter 9~~

Chapters 17 (§ ~~63.1-172~~ *63.2-1700* et seq.) *and 18 (§ 63.2-1800 et seq.)* of Title ~~63.1~~ *63.2*, shall be the responsibility of the appropriate local ~~public welfare agency~~ *department of social services* of the county or city of which the patient was a resident at the time of admission.

§ 37.1-197.1. Prescription team; prescreening; predischarge planning.

A. In order to provide comprehensive mental health, mental retardation and substance abuse services within a continuum of care, the operating community services board, administrative policy board or local government department with a policy-advisory board shall function as the single point of entry into the publicly funded mental health, mental retardation and substance abuse services system and shall fulfill the following responsibilities:

1. Establish and coordinate the operation of a prescription team that shall be composed of representatives from the operating community services board, administrative policy board or local government department with a policy-advisory board, ~~social services or public welfare~~ *local* department *of social services*, health department, Department of Rehabilitative Services office serving in the community services board's area and, as appropriate, the social services staff of the state institution(s) serving the community services board's catchment area and the local school division. Such other human resources agency personnel may serve on the team as the team deems necessary. The team, under the direction of the operating community services board, administrative policy board or the local government department with a policy-advisory board, shall be responsible for integrating the community services necessary to accomplish effective prescreening and predischarge planning for consumers referred to the operating community services board, administrative policy community services board, or local government department with a policy-advisory board. When prescreening reports are required by the court on an emergency basis pursuant to § 37.1-67.3, the team may designate one team member to develop the report for the court and report thereafter to the team.

2. Provide prescreening services prior to the admission for treatment pursuant to § 37.1-65 or § 37.1-67.3 of any person who requires emergency mental health services while in a political subdivision served by the operating community services board, administrative policy board or local government department with a policy-advisory board.

3. Provide, in consultation with the appropriate state mental health facility or training center, predischarge planning for any person who, prior to admission, resided in a political subdivision served by the operating community services board, administrative policy board, or local government department with a policy-advisory board or who chooses to reside after hospitalization in a political subdivision served by the board, and who is to be released from a state mental health facility or training center pursuant to § 37.1-98. The predischarge plan shall be completed prior to the person's discharge. The plan shall be prepared with the involvement and participation of the consumer or his representative and must reflect the consumer's preferences to the greatest extent possible. The plan shall include the mental health, mental retardation, substance abuse, social, educational, medical, employment, housing, legal, advocacy, transportation, and other services that the consumer will need upon discharge into the community and identify the public or private agencies that have agreed to provide them.

No person shall be discharged from a state mental health facility or training center without completion by the operating board, administrative policy board, or local government department with a policy-advisory board of the predischarge plan described in subdivision 3 of this subsection. If state facility staff identify a patient or resident as ready for discharge and the operating board, administrative policy board, or local government department with a policy-advisory board that is responsible for the person's care disagrees, the operating board, administrative policy board or local government department with a policy-advisory board shall document in the treatment plan within thirty days of such person's identification any reasons for not accepting the person for discharge. If the state facility disagrees with the operating board, administrative policy board, or local government department with a policy-advisory board and the operating board, administrative policy board, or local government department with a policy-advisory board refuses to develop a predischarge plan to accept the person back into the community, the state facility or the operating board, administrative policy board, or local government department with a policy-advisory board shall request the Commissioner to review the state facility's determination that the person is ready for discharge in accordance with procedures established in the performance contract. If the Commissioner determines that the person is ready for discharge, a predischarge plan shall be developed by the Department to ensure the availability of adequate services for the consumer and the protection of the community. The Commissioner shall also verify that sufficient state-controlled funds have been allocated to the operating board, administrative policy board, or local government department with a policy-advisory board through the performance contract. If sufficient state-controlled funds have been allocated, the Commissioner may contract with a private provider or another operating board, administrative policy board, or local government department with a policy-advisory board to deliver the services specified in the predischarge plan and withhold funds allocated applicable to that consumer's predischarge plan from the operating board, administrative policy

board, or local government department with a policy-advisory board in accordance with *subsections C and E of* § 37.1-198 ~~C and E~~.

B. The operating community services board, administrative policy board, or local government department with a policy-advisory board may perform the functions set out in subdivision A 1, regarding the prescription team, in the case of children by referring consumers who are minors to the locality's family assessment and planning team and by cooperating with the community policy and management team in the coordination of services for troubled youths and their families. The operating board, administrative policy board, or local government department with a policy-advisory board may involve the family assessment and planning team and the community policy and management team, but it remains responsible for performing the functions set out in subdivisions A 2 and A 3 in the case of children.

§ 46.2-932.1. Duty of driver approaching blind pedestrian; effect of failure of blind person to carry white cane or use dog guide.

The driver of a vehicle approaching a totally or partially blind pedestrian who is carrying a cane predominantly white or metallic in color (with or without a red tip) or using a dog guide shall take all necessary precautions to avoid injury to such blind pedestrian and dog guide, and any driver who fails to take such precautions shall be liable in damages for any injury caused such pedestrian and dog guide; provided that a totally or partially blind pedestrian not carrying such a cane or using a dog guide in any of the places, accommodations or conveyances listed in § 51.5-44, shall have all of the rights and privileges conferred by law upon other persons, and the failure of a totally or partially blind pedestrian to carry such a cane or to use a dog guide in any such places, accommodations or conveyances shall not be held to constitute nor be evidence of contributory negligence; provided, that nothing in this section shall be construed to limit the application of § 46.2-933 or § 46.2-934.

CHAPTER 12.

PERSONS WHO ARE BLIND AND VISION IMPAIRED.

Article 1.

General Provisions.

§ 51.5-60. Definitions.

The following terms whenever used in this chapter, shall have the meanings respectively set forth unless a different meaning is clearly required by the context:

"Blind person" means a person having not better than 20/200 central visual acuity in the better eye measured at twenty feet with correcting lenses or having visual acuity greater than 20/200 but with the widest diameter of the visual field in the better eye subtending an angle of no greater than twenty degrees, measured at a distance of thirty-three centimeters using a three-millimeter white test object, or a Goldman III-4e target, or other equivalent equipment. Such blindness shall be certified by a duly licensed physician or optometrist.

"Board" means the Board for the Blind and Vision Impaired.

"Business enterprise" means any business other than a vending stand.

"Commissioner" means the Commissioner of the Department for the Blind and Vision Impaired.

"Custodian" means any person or group of persons having the authority to grant permission for the installation and operation of vending stands and other business enterprises.

"Department" means the Department for the Blind and Vision Impaired.

"Direct labor" means all work required for the preparation, processing and assembling of goods or articles including the packaging and packing thereof, but not including time spent in the supervision, administration, inspection and shipping of such operations, or in the production of component materials by other than blind persons.

"Goods or articles made by blind persons" means goods or articles in the manufacture of which not less than seventy-five percent of the total hours of direct labor is performed by a blind person or persons.

"Nominee" means any nonprofit corporation familiar with work for the blind and in the placement of the blind.

"Public and private buildings and other properties throughout the Commonwealth" means (i) buildings, land, or other property owned by or leased to the Commonwealth other than rights-of-way for interstate highways or (ii) buildings, land, or other property owned by or leased to a political subdivision, including a municipality, or a corporation or individual.

"Vending machine" means a coin or currency operated machine that dispenses articles or services, except that those machines operated by the United States Postal Service for the sale of postage stamps or other postal products and services, machines providing services of a recreational nature, and telephones shall not be considered to be vending machines.

"Vending stand" means an installation in any public or private building for the sale of newspapers, periodicals, confections, tobacco products, soft drinks, ice cream, wrapped foods and such other articles

as may be approved by the custodian thereof and the Department.

Article 2.

Board for the Blind and Vision Impaired.

§ 51.5-61. Appointment, terms and qualifications of members of Board; eligibility for reappointment; quorum.

The Board for the Blind and Vision Impaired is continued. The Board shall consist of seven members who shall be appointed by the Governor for terms of four years. No person shall be eligible to serve more than two successive terms, provided that a person heretofore or hereafter appointed to fill a vacancy may serve two additional successive terms. Vacancies occurring on the Board shall be filled by the Governor for the unexpired term. All appointments hereunder shall be made without reference to party affiliations, but solely on account of the fitness of the appointees to discharge their duties as members of the Board. The membership of the Board, however, shall at all times include four persons who are blind. Four members of the Board shall constitute a quorum for the transaction of any lawful business. Annually, the Board shall elect one of its blind members as chairman, who shall preside at its meetings and shall have power to call meetings when he deems it advisable.

§ 51.5-62. Powers and duties of Board; form of materials.

A. The Board shall exercise the following general powers and duties:

1. Advise the Governor, the Secretary of Health and Human Resources, the Commissioner, and the General Assembly on the delivery of public services to and the protection of the rights of persons with disabilities on matters relating to this title, and on such other matters as the Governor, Secretary, Commissioner, or the General Assembly may request; and

2. Review and comment on policies, budgets and requests for appropriations for the Department prior to their submission to the Secretary of Health and Human Resources and the Governor and on applications for federal funds.

B. Material submitted by the Commissioner for review and comment by the Board, when practicable, shall be in the medium or format suitable for review by each member of the Board.

§ 51.5-63. Board to administer institutional fund.

The Board is authorized to create and hold an institutional fund for its exclusive use and purposes into which it may deposit the proceeds of any gift, grant, bequest, allotment, or devise of any nature received from private sources. Such fund shall be subject to the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.). The fund and the income from such fund shall not be subject to the provisions of § 2.2-1802. The availability of such fund shall not be taken into consideration in, nor used to reduce, state appropriations or payments, but such funds shall be used in accordance with the wishes of the donors thereof to strengthen the services rendered to the blind and vision impaired of this Commonwealth.

Article 3.

Department for the Blind and Vision Impaired.

§ 51.5-64. Commissioner of Department; personnel.

The supervision of the Department shall be the responsibility of the Commissioner of the Department under the direction and control of the Governor. The Commissioner shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at the pleasure of the Governor. The Commissioner of the Department shall employ such personnel as may be required to carry out the purposes of this chapter.

§ 51.5-65. Functions, duties and powers of Commissioner.

In addition to the functions, duties and powers conferred and imposed upon the Commissioner by other provisions of law, he shall:

1. Ensure that the provisions of this chapter are properly administered;

2. Assist and cooperate with local authorities in the administration of this chapter;

3. Prescribe the form of applications, reports, affidavits and such other forms as shall be required in the administration of this chapter and the required schedule for submission thereof;

4. Cooperate with the federal Department of Education and other agencies of the United States in relation to matters set forth in this chapter; and

5. Adopt regulations to carry out the applicable provisions of this chapter.

§ 51.5-66. Authority to receive grants-in-aid and gifts.

The Department is authorized to receive, for and on behalf of the Commonwealth and its subdivisions, from the United States and agencies thereof, and from any and all other sources, gifts and grants-in-aid, made for the purpose of providing, or to assist in providing, services to the blind or vision impaired, including expenses of administration.

The Department is designated as a state agency for the purpose of cooperating with the federal government in carrying out the provisions and purposes of federal laws providing for the vocational rehabilitation and other rehabilitation of eligible blind and vision impaired persons. The Department is

authorized and directed to cooperate with the federal government in the administration of such laws of Congress; to prescribe and provide such courses of career and technical education and other services as may be necessary for the rehabilitation of blind and vision impaired persons and provided for the supervision of such training and services; and to direct the disbursement and administer the use of all funds provided by the federal government to this Commonwealth for the vocational rehabilitation and other rehabilitation of such persons. All such funds shall be paid into the state treasury.

§ 51.5-67. Donation of equipment.

The Department shall retain title to items of nonexpendable equipment purchased by the Department for individuals or groups of individuals, in accordance with this chapter and the federal Rehabilitation Act, while such equipment has an undepreciated monetary value. Once the equipment has reached a depreciated value of zero, the Department may donate the equipment to the individual or group of individuals then authorized to use it by the Department. The donation shall be consistent with the public purpose of promoting the rehabilitation of persons with disabilities. The Department, in concert with the Department of Accounts, shall establish criteria for depreciation of such equipment in accordance with generally accepted principles and maintain depreciation records. The Department shall report a donation pursuant to this section to the Division of Purchases and Supply and to the Auditor of Public Accounts. Nothing in this section shall be construed to excuse the Department from complying with § 2.2-1124 except for equipment donated pursuant to this section.

§ 51.5-68. Register of the blind; reports required of physicians and others.

The Department shall prepare and maintain a complete register of the blind in the Commonwealth, which shall include information that the Department deems of value. Each physician, optometrist or other person who upon examination of the eyes of any person determines that such person is a blind person as defined in § 51.5-60, shall immediately report the name and address of such person to the Department.

§ 51.5-69. Information contained in register to be confidential; conditions under which information released; penalty.

Information contained on the register referred to in § 51.5-68 concerning individuals shall be confidential for purposes other than those directly connected with the administration of programs under the Department's jurisdiction or as required by other agencies of the Commonwealth. Information needed for research purposes may be made available to an organization or individual engaged in research only for purposes directly connected with the administration of programs relating to the blind and vision impaired, including research for the development of new knowledge or techniques that would be useful in the administration of the program, but only if the organization or individual furnishes satisfactory assurance that the information will be used solely for the purpose for which it is provided; that it will not be released to persons not connected with the study under consideration; and that the final product of the research will not reveal any information that may serve to identify any person about whom information has been obtained through the Department without written consent of such person and the Department. If any person willfully discloses information concerning individuals except as provided herein he shall be guilty of a Class 1 misdemeanor, and upon conviction, shall be punished accordingly.

§ 51.5-70. Establishment of standards of personnel and service.

The Department shall, as to matters relating to rehabilitation of the blind or vision impaired, establish minimum standards of service and personnel based upon training, experience and general ability for the personnel employed by the Department and the Commissioner in the administration of this chapter and adopt necessary regulations to maintain such standards, including such regulations as may be embraced in the development of a system of personnel administration meeting requirements of the federal Department of Education.

§ 51.5-71. State Rehabilitation Council for the Blind and Vision Impaired created.

The State Rehabilitation Council for the Blind and Vision Impaired is hereby created to provide advice to the Department for the Blind and Vision Impaired regarding vocational services provided pursuant to Title I and Title VI of the federal Rehabilitation Act. Membership and duties shall be constructed according to federal provisions.

§ 51.5-72. Establishment of schools and manufacturing and service industries; expenditures; advisory boards.

A. The Department may (i) establish, equip and maintain schools for manufacturing and service industrial training for the employment of suitable blind persons, (ii) pay its employees suitable wages and contribute five percent of the creditable compensation of those employees who elect to participate in a before-tax payroll deduction to a tax deferred retirement savings plan established under the United States Internal Revenue Code for nonprofit agencies, and (iii) devise means for the sale and distribution of the products thereof. However, any expenditures made under §§ 51.5-63, 51.5-66, 51.5-68, and 51.5-72 through 51.5-76 shall not exceed the annual appropriation or the amount received by way of

bequest or donation during any one year, and no part of the funds appropriated by the Commonwealth for the purposes of §§ 51.5-63, 51.5-66, 51.5-68, and 51.5-72 through 51.5-76 shall be used for solely charitable purposes.

B. The Board shall establish an advisory board for each of the manufacturing and services industries established pursuant to this section. Each board shall consist of nine persons, at least two of whom shall be blind persons or parents of blind persons, at least two of whom shall represent human service agencies, and the remainder of whom shall represent local business and manufacturing entities and other employers. The Board shall initially appoint the members of each advisory board. As each member's term expires, the advisory board shall itself make subsequent appointments for terms of three years. No member shall serve for more than two consecutive three-year terms. The powers and duties of each advisory board shall include but not be limited to advising managers of the manufacturing plants on business trends, product development, contract opportunities, and other business matters and reviewing and commenting on fiscal and budgetary matters concerning the operations of the manufacturing and service industries.

§ 51.5-73. Rehabilitation Center for the Blind and Vision Impaired; operation and maintenance.

The Department shall have the authority and responsibility for the operation and maintenance of the Virginia Rehabilitation Center for the Blind and Vision Impaired for the purpose of providing services to eligible blind and vision impaired individuals.

§ 51.5-74. Operation of library service for persons with disabilities; agreement with The Library of Virginia.

The Department is hereby authorized to maintain and operate a library service for persons who are blind, vision impaired, and disabled who are eligible for such services pursuant to the Pratt-Smoot Act (P.L. 89-522). Special materials that are provided through this program may include but are not limited to sound reproduction machines such as tape players and record players; talking book records; magnetic tapes; large print books; Braille books; book holders; page turners; captioned films for the deaf; and special electronic devices used as reading aids. The Department may enter into an agreement or agreements with The Library of Virginia for the purpose of receiving federal funds for the operation of this program.

§ 51.5-75. Use of earnings of schools and workshops; record of receipts and expenditures; report to Governor.

In furtherance of the purposes of §§ 51.5-63, 51.5-66, 51.5-68, and 51.5-72 through 51.5-76, the Department shall have authority to use any receipts or earnings that accrue from the operation of industrial schools and workshops as provided in such sections, but a detailed statement of receipts or earnings and expenditures shall be carefully kept, and the Department shall make an annual report to the Governor of its proceedings and operations for each fiscal year.

§ 51.5-76. Cooperation with other state agencies.

The Department shall cooperate with the State Board of Health and other state agencies in the adoption and enforcement of blindness prevention efforts.

§ 51.5-77. Cooperation with federal agencies.

The Department shall cooperate with the federal Department of Education and any other agencies of the United States, in any reasonable manner that may be necessary for this Commonwealth to qualify for and to receive grants or aid from such agencies for social services, rehabilitation, personal adjustment, library and education services to the blind or vision impaired in conformity with the provisions of this chapter, including the making of such reports in such form and containing such information as such agencies of the United States may require, and to comply with such provisions as such agencies of the United States may require to assure the correctness and verification of such reports.

Article 4.

Business Enterprises for the Blind.

§ 51.5-78. Operation by Department.

The Department is hereby authorized to operate vending stands and other business enterprises in public and private buildings for the purpose of providing blind persons with employment, enlarging the economic opportunities of the blind, and stimulating the blind to make themselves self-supporting.

§ 51.5-79. Operation by blind persons.

Blind persons under the provisions of this article shall be authorized to operate vending stands and other business enterprises on any property where, in the discretion of the owner or custodian of the property, vending stands and other business enterprises may be properly and satisfactorily operated. No fee shall be charged to any blind person for operating a vending stand in or on any buildings, land or other property owned by or leased to the Commonwealth other than rights-of-way for interstate highways and property of community colleges; provided, however, that such blind vendors shall be responsible to the Commonwealth for the charges they incur for utilities.

§ 51.5-80. Contract with nominee to provide equipment and merchandise.

The Department may contract with any nominee to provide all necessary equipment and merchandise for the operation of the vending stand and business enterprise program in the rehabilitation of the blind.

§ 51.5-81. Contract with nominee to furnish services.

The Department may contract with the nominee, as agent of the Department, to furnish services, including the purchase of vending stand and other business enterprise equipment and stock, the collection of the funds required to be set aside for the purposes specified in § 51.5-97 and the keeping of accounts.

§ 51.5-82. Contracts with federal agencies for installation and supervision.

The Department may contract with agencies of the federal government for the installation and supervision of vending stands and business enterprises on federal property in this Commonwealth.

§ 51.5-83. Surveys of business enterprise opportunities.

The Department shall make surveys of vending stand and other business enterprise opportunities for blind persons in public and private buildings and other properties throughout the Commonwealth.

§ 51.5-84. Licensure of blind adult residents as operators.

The Department shall be the agency to license blind persons who are residents of the Commonwealth and who are at least eighteen years of age for the operation of vending stands and other business enterprises.

In licensing operators, the Department shall give preference to those blind persons who are in need of employment. Persons licensed shall be qualified to operate such vending stands and other business enterprises.

§ 51.5-85. Selection of location and operator of enterprise; supervision.

The Department shall be the agency to select the location of the vending stand and other business enterprise, to select the operator, and to provide all necessary supervision of the operator and the vending stand and other business enterprise.

§ 51.5-86. Other general duties of the Department.

The Department shall perform such other duties as may be necessary and proper to carry out the provisions of this article.

§ 51.5-87. Revocation of privilege to operate enterprise.

All such privileges to operate vending stands and other business enterprises shall be revocable by the Department in accordance with departmental regulations.

§ 51.5-88. Selection of location and type of enterprise with approval of custodian.

The Department, with the approval of the custodian having charge of the property on which the vending stand and other business enterprise is to be located, shall select the location for such vending stand and other business enterprise and the type of vending stand and other business enterprise to be provided.

§ 51.5-89. Placement of blind persons in vacancies by Department; vending stands in Capitol; regulations.

When any vending stand or other business enterprise operated in a public building becomes vacant or a vacancy is created through the construction or acquisition of new public buildings or renovation or expansion of existing public buildings, the existence of such vacancies shall be made known to the Department. The Department acting on behalf of the blind shall have first priority in assuming the operation of such vending stand or business enterprise through placement of a properly trained blind person in such vacancy. This section shall not apply to vending stands or other business enterprises operated in the State Capitol nor the legislative office buildings that shall be subject to the control of the Rules Committee of the House of Delegates and the Rules Committee of the Senate.

§ 51.5-90. Providing blind persons with equipment and merchandise.

The Department shall provide blind persons licensed under this article with such vending stand and other business enterprise equipment and a stock of suitable articles to be vended therefrom as may be necessary.

§ 51.5-91. Ownership of vending stands and other equipment.

The ownership of all vending stands and other business enterprise equipment provided under this article shall, however, remain in the Department, or in the nominee of the Department.

§ 51.5-92. Reports by nominee.

The Department shall require the nominee to make such reports in such form and containing such information as the Department may from time to time require.

§ 51.5-93. Requiring nominee to comply with provisions.

The Department shall require the nominee to comply with such provisions as the Department may from time to time find necessary.

§ 51.5-94. Suspension of nominee; continued operation of program.

If the Department, after reasonable notice and opportunity for hearing to the nominee, finds that the

nominee has failed to comply substantially with the provisions of this article or the regulations issued thereunder, it shall notify the nominee that its designation as nominee is suspended until the Department is satisfied that there will no longer be any such failure. Until the Department is so satisfied, or in the event the nominee shall cease to exist, the Department may make such provision as it deems proper for the continued operation of the program established under the provisions of this article.

§ 51.5-95. Regulations for administration of article.

The Commissioner is authorized to adopt regulations for the administration of this article which shall, among other things, provide for the acquisition and disposition of the vending stand and other business enterprise equipment and other assets used in the operations pursuant to this article.

§ 51.5-96. Requiring performance of duties by officers and employees.

The Department may require of its officers and employees the performance of such duties to effectuate this article as it deems proper.

§ 51.5-97. Funds set aside from proceeds of business enterprises.

The Department shall set aside or cause to be set aside from the net proceeds of the operations authorized by this article such funds as may be necessary for the purpose of (i) maintenance and replacement of equipment, (ii) purchase of new equipment, (iii) management services, (iv) assuring a fair minimum return to vendors and (v) the establishment and maintenance of retirement or pension funds, health insurance contributions and the provision for paid sick leave and vacation time in accordance with the Randolph-Sheppard Act Amendments of 1974 (P.L. 93-516).

§ 51.5-98. Exemption from taxation; collection and remittance of sales and meals taxes.

A. Except as hereinafter provided, the Department, its nominee, and blind persons operating vending stands or other business enterprises under the jurisdiction of the Department shall be exempt from all state and local taxes.

B. Notwithstanding the provisions of subsection A, blind persons operating vending stands or other business enterprises under the jurisdiction of the Department shall be liable for the collection and remittance of any state or local retail sales taxes imposed or authorized by Chapter 6 (§ 58.1-600 et seq.) of Title 58.1 and local meals taxes imposed or authorized by Chapter 38 (§ 58.1-3800 et seq.) of Title 58.1 that are actually collected or collectible from the purchaser unless the property on which such vending stands or other business enterprises are located has been acquired and used by the United States for any military or naval purpose within the Commonwealth and a post exchange or tax exempt concession is located and operated on such land, in which case such blind persons shall not be liable for the collection and remittance of such state or local retail sales tax or local meals tax.

C. Nothing in this section shall be construed to relieve any blind person operating vending stands or other business enterprises under the jurisdiction of the Department from the imposition of (i) local income taxes, (ii) state income taxes or (iii) other taxes imposed that are unrelated to the operation of such vending stands or other business enterprises.

§ 51.5-99. Appeal.

Any person aggrieved by any act of the Department or of its agents or employees or of its nominee in the administration of this article may appeal such act in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

§ 51.5-100. Operation of vending machines at rest areas on interstate highways.

The Department, in cooperation with the Department of Transportation, is authorized to operate vending machines at rest areas on the interstate highways in the Commonwealth and to use the net proceeds from such operations to establish and operate vending stands and other business enterprises as defined in Article 1 (§ 51.5-60 et seq.) of this chapter and to provide health insurance for blind vendors.

Article 5.

Sale of Goods Made by the Blind.

§ 51.5-101. Registration of manufacturers and distributors of goods made by blind persons; authorization to use official stamp, label, etc.

To facilitate ready and authoritative identification of goods or articles made by blind persons, any person and any public or private institution or agency, firm, association or corporation engaged in the manufacture or distribution of goods or articles made by a blind person or persons shall apply to the Department for a registration and authorization to use an official imprint, stamp, symbol or label, designed or approved by the Department, to identify goods and articles as made by blind persons. Nothing in this article shall authorize the identification of goods or articles as made by blind persons when the labor performed by blind persons in connection therewith shall consist solely of the packaging or packing thereof as distinguished from the preparation, processing or assembling of such goods or articles; nor shall any package the contents of which are not blind-made carry the label "packaged by the blind" or words of similar import. The Department shall investigate each application, under regulations it shall adopt for the administration of this article, to assure that such person or organization is actually engaged in the manufacture or distribution of blind-made goods or articles. The

Department may register, without investigation, nonresident individuals and out-of-state agencies, firms, associations or corporations upon proof that they are recognized and approved by the state of their residence or organization pursuant to a law of such state imposing requirements substantially similar to those prescribed pursuant to this article. All registrations shall be valid for one year from date of issue. Nothing in this article shall be deemed to prohibit the offering for sale or sale by a blind person of an article or articles made by such blind person without application for registration or to require the labeling of such article or articles.

§ 51.5-102. Goods not to be represented as made by blind persons unless identified as such by label, stamp, etc.; what goods may be so identified.

No goods or articles made in this or any other state may be displayed, advertised, offered for sale or sold in this Commonwealth upon a representation that the same are made by blind persons unless the same are identified as such by label, imprint, stamp or symbol, and no such goods or articles may be so identified unless at least seventy-five per centum of the total hours of direct labor of producing such goods or articles shall have been performed by a blind person or persons.

§ 51.5-103. How goods made by blind persons to be stamped or labeled.

Any blind workman, or any public or private institution or agency, corporation, firm or association, registered with the Department pursuant to this article, engaged in the manufacture or distribution of articles of merchandise, made or manufactured by a blind person or persons, shall imprint or stamp upon such articles of merchandise or affix thereto labels containing the words, "made by a blind workman or made by the blind, or blind-made," to which shall be added the name of the manufacturer, the place of manufacture and such other information as the Department may prescribe.

§ 51.5-104. Use of words "State," "Commonwealth," or "Virginia."

No person, association, or corporation engaged in the sale of blind-made products may use the words "State," "Commonwealth," or "Virginia" in its company or corporate title unless such person, association, or corporation is actually an instrumentality of the Commonwealth.

§ 51.5-105. Certain acts declared misdemeanors.

Any person, firm, corporation, institution or association, who (i) shall use or employ an imprint, stamp, symbol or label issued or approved by the Department for the Blind and Vision Impaired or an imitation thereof without having registered with the Department, or (ii) who shall directly or indirectly by any means indicate or tend to indicate or represent that the goods or articles were made by a blind person or persons when in fact such goods or articles were not so made, or (iii) who violates any provision of § 51.5-104 shall be guilty of a misdemeanor.

CHAPTER 13.

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING.

§ 51.5-106. Board established; appointment, terms and qualifications of members; meetings; chairman.

There is hereby continued an Advisory Board, hereinafter referred to as the Board, for the Department for the Deaf and Hard-of-Hearing.

The Board shall be composed of nine members appointed by the Governor as follows:

Four representatives of deafness-oriented professions concerned with the health, education, rehabilitation, mental health and welfare of the deaf and hard-of-hearing; four citizens who are deaf or hard-of-hearing; and one member who is a parent of a child who is deaf or hard-of-hearing. Appointments shall be for terms of four years. No person shall be eligible to serve more than two successive terms, except that a person appointed to fill a vacancy may serve two additional successive four-year terms. The Board shall meet at the call of the Chairman, who shall be selected by the Board from among its membership, but no less than four times a year.

§ 51.5-107. Powers and duties of Board.

The Board shall have the following powers and duties:

1. To ensure the development of long-range programs and plans provided by the state and local governments for Virginians who are deaf or hard-of-hearing;

2. To review and comment on all budgets and requests for appropriations for the Department prior to their submission to the Secretary of Health and Human Resources and the Governor and on all applications for federal funds; and

3. To advise the Governor, Secretary of Health and Human Resources, Director and the General Assembly on matters related to Virginians who are deaf or hard-of-hearing.

§ 51.5-108. Department for the Deaf and Hard-of-Hearing continued.

The Department for the Deaf and Hard-of-Hearing is continued. The Department shall be in the executive branch of the state government and shall be assigned to the Secretary of Health and Human Resources.

§ 51.5-109. Director; appointment; compensation; qualifications.

The Governor shall appoint a Director of the Department who shall serve at the pleasure of the

Governor and shall be paid such compensation as the Governor may fix.

The Director may be either a person who is deaf or hard-of-hearing or one with normal hearing, but shall be a trained professional who is experienced in problems of the deaf and hard-of-hearing and skilled in the use of manual communication, commonly referred to as sign language.

§ 51.5-110. Powers and duties of Director.

A. The Director shall have the following duties and powers:

1. To supervise the administration of the Department;

2. To prepare, approve, and submit all requests for appropriations and be responsible for all expenditures pursuant to appropriations;

3. To employ such personnel as may be required to carry out the purposes of this chapter;

4. To make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this chapter, including, but not limited to, contracts with the United States, other states, and agencies and governmental subdivisions of Virginia; and

5. To accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Director shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable.

B. To effectuate the purposes of this chapter, the Director may request from any department, division, board, commission or other agency and the same shall provide such information, assistance and cooperation as will enable the Director properly to exercise his powers and perform his duties hereunder.

§ 51.5-111. Persons who are deaf or hard-of-hearing defined and categorized.

For the purposes of this chapter, persons who are deaf or hard-of-hearing include those who experience hearing losses that range from a mild hearing loss to a profound hearing loss. They are categorized as follows:

1. Persons who are deaf are those whose hearing is totally impaired or whose hearing, with or without amplification, is so seriously impaired that the primary means of receiving spoken communication is through visual input such as lip-reading, sign language, finger spelling, reading or writing.

2. Persons who are hard-of-hearing are those whose hearing is impaired to an extent that makes hearing difficult but does not preclude the understanding of spoken communication through the ear alone, with or without a hearing aid.

§ 51.5-112. Powers and duties of Department.

The Department shall have the following powers and duties:

1. To develop a program to inform persons who are deaf or hard-of-hearing and the public of opportunities available for persons who are deaf or hard-of-hearing to fulfill their needs and solve certain problems through existing state and local services and to make available such other information as would be of value to families, professionals and other citizens working or involved in the deafness field;

2. To promote a framework for consultation and cooperation among the state agencies and institutions serving persons who are deaf or hard-of-hearing;

3. To aid in the provision of technical assistance and training within the Commonwealth in order to support efforts to initiate or improve programs and services for persons who are deaf or hard-of-hearing;

4. To evaluate state programs that deliver services to persons who are deaf or hard-of-hearing to determine their effectiveness and to make recommendations to the appropriate government officials concerning the future financial support and continuation of such programs and the establishment of the new ones;

5. To monitor state programs delivering services to persons who are deaf or hard-of-hearing to determine the extent to which services promised or mandated are delivered;

6. To make appropriate recommendations for legislative changes to the Governor and General Assembly and to follow and evaluate federal legislation having a potential impact upon persons who are deaf or hard-of-hearing who live in the Commonwealth;

7. To cooperate with schools for the deaf as provided in Chapter 19 (§ 22.1-346 et seq.) of Title 22.1 insofar as may be practicable;

8. To operate a program of technology assistance and services to encourage independence of persons who are deaf, hard-of-hearing, or speech impaired, including the distribution of devices for the deaf and support of message relay services, through grants, contracts and other means, including a sliding fee scale where appropriate; and

9. To adopt such regulations, consistent with this chapter, as may be necessary to carry out the purpose and intent of this chapter and other laws of the Commonwealth administered by the Director or

the Department. Such regulations shall be binding on all officers, agents, and employees engaged in implementing the provisions of this chapter.

§ 51.5-113. Statewide interpreter service.

The Department is authorized to establish, maintain and coordinate a statewide service to provide courts, state and local legislative bodies and agencies, both public and private, and persons who are deaf or hard-of-hearing who request the same with qualified interpreters for persons who are deaf or hard-of-hearing out of such funds as may be appropriated to the Department for these purposes.

Those courts and state and local agencies that have funds designated to employ qualified interpreters shall pay for the actual cost of such interpreter. The Department is further authorized to establish and maintain lists of qualified interpreters for persons who are deaf or hard-of-hearing to be available to the courts, state and local legislative bodies and agencies, both public and private, and to persons who are deaf or hard-of-hearing.

The Department is authorized to charge a reasonable fee for the administration of quality assurance screening of interpreters. Such fees shall be applied to the costs of administering the statewide interpreter service.

For purposes of this section, a qualified interpreter shall be one who holds at least one of the following credentials:

1. Certification from any national organization whose certification process has been recognized by the Department for the Deaf and Hard-of-Hearing; or

2. A current screening level awarded by the Virginia Quality Assurance Screening Program of the Department for the Deaf and Hard-of-Hearing; or

3. A screening level or recognized evaluation from any other state when (i) the credentials meet the minimum requirements of Virginia Quality Assurance Screening and (ii) the credentials are valid and current in the state issued.

§ 51.5-114. Gifts and donations; disposition of moneys received.

The Department is authorized to receive such gifts and donations, either from public or private sources, as may be offered unconditionally or under such conditions as in the judgment of the Department are proper and consistent with this chapter. All moneys received as gifts or donations or state appropriations shall be deposited in the state treasury to be used by the Department to defray expenses in performing its duties. A full report of all gifts and donations accepted, together with the names of the donors and the respective amounts contributed by each, and all disbursements therefrom, shall be submitted annually to the Governor by the Department.

§ 53.1-61. Determination whether prisoner has dependents receiving public assistance; payment of portion of earnings; remedies for enforcement of support obligation.

A. In order to determine whether a prisoner to be released for employment as provided in § 53.1-60 has dependents receiving ~~welfare~~ *public assistance* benefits, the Director may require such person to reveal the identity and residence of any dependents as a condition to release. The Director shall notify any such dependents, the *local* department of ~~welfare or~~ social services ~~for the locality~~ where such dependents reside and the Commissioner of the State Department of Social Services of the release of such person for employment. Upon request of the local department of ~~welfare or~~ social services or the Commissioner of the State Department of Social Services, the Director shall withhold and pay over a portion of the person's earnings as provided in § 53.1-60.

B. If the local department of ~~welfare or~~ social services or the Commissioner of the State Department of Social Services objects to the amount withheld by the Director, the balance credited to the person's account shall be subject to all civil remedies provided by law to the local department of ~~welfare or~~ social services or the Commissioner of the State Department of Social Services for the enforcement of support of dependents receiving ~~welfare~~ *public assistance* benefits.

C. The director of the local department of ~~welfare or~~ social services and the Commissioner of the State Department of Social Services or their designees shall be permitted access to the records of the Director concerning the earnings of the prisoner.

§ 53.1-131. Provision for release of prisoner from confinement for employment, educational or other rehabilitative programs; escape; penalty; disposition of earnings.

A. Any court having jurisdiction for the trial of a person charged with a criminal offense or charged with an offense under Chapter 5 (§ 20-61 et seq.) of Title 20 may, if the defendant is convicted and (i) sentenced to confinement in jail or (ii) being held in jail pending completion of a presentence report pursuant to § 19.2-299, and if it appears to the court that such offender is a suitable candidate for work release, assign the offender to a work release program under the supervision of a probation officer, the office of the sheriff or the administrator of a local or regional jail or a program designated by the court. The court further may authorize the offender to participate in educational or other rehabilitative programs designed to supplement his work release employment. The court shall be notified in writing by the director or administrator of the program to which the offender is assigned of the offender's place of

employment and the location of any educational or rehabilitative program in which the offender participates.

Any person who has been sentenced to confinement in jail or who has been convicted of a felony but is confined in jail pursuant to § 53.1-20, in the discretion of the sheriff or the administrator of a local or regional jail, may be assigned by the sheriff or the administrator of a local or regional jail to a work release program under the supervision of the office of the sheriff or the administrator of a local or regional jail. The sheriff or the administrator of a local or regional jail may further authorize the offender to participate in educational or other rehabilitative programs as defined in this section designed to supplement his work release employment. The court that sentenced the offender shall be notified in writing by the sheriff or the administrator of a local or regional jail of any such assignment and of the offender's place of employment or other rehabilitative program. The court, in its discretion, may thereafter revoke the authority for such an offender to participate in a work release program.

The sheriff or other administrative head of a local correctional facility and the Director may enter into agreements whereby persons who are committed to the Department, whether such persons are housed in a state or local correctional facility, and who have met all standards for such release, may participate in a local work release program or in educational or other rehabilitative programs as defined in this section. All persons accepted in accordance with this section shall be governed by all regulations applying to local work release, notwithstanding the provisions of any other section of the Code. Local jails shall qualify for compensation for cost of incarceration of such persons pursuant to § 53.1-20.1, less any payment for room and board collected from the inmate.

Any offender assigned to such a program by the court or sheriff or the administrator of a local or regional jail who, without proper authority or just cause, leaves the area to which he has been assigned to work or attend educational or other rehabilitative programs, or leaves the vehicle or route of travel involved in his going to or returning from such place, shall be guilty of a Class 1 misdemeanor. In the event such offender leaves the Commonwealth, the offender may be found guilty of an escape as provided in § 18.2-477. An offender who is found guilty of a Class 1 misdemeanor in accordance with this section shall be ineligible for further participation in a work release program during his current term of confinement.

The Board shall prescribe regulations to govern the work release, educational and other rehabilitative programs authorized by this section.

Any wages earned pursuant to this section by an offender may, upon order of the court, be paid to the director or administrator of the program after standard payroll deductions required by law. Distribution of such wages shall be made for the following purposes:

1. To pay an amount to defray the cost of his keep;

2. To pay travel and other such expenses made necessary by his work release employment or participation in an educational or rehabilitative program;

3. To provide support and maintenance for his dependents or to make payments to the local department of ~~welfare or~~ social services or the Commissioner of Social Services, as appropriate, on behalf of dependents who are receiving public assistance *or social services* as defined in § ~~63.1-87~~ *63.2-100*; or

4. To pay any fines, restitution or costs as ordered by the court.

Any balance at the end of his sentence shall be paid to the offender upon his release.

B. For the purposes of this section:

"Educational program" means a program of learning recognized by the State Council of Higher Education, the State Board of Education or the State Board of Corrections.

"Rehabilitative program" includes an alcohol and drug treatment program, mental health program, family counseling, community service or other community program approved by the court having jurisdiction over the offender.

"Work release" means full-time employment or participation in suitable career and technical education programs.

§ 54.1-2969. Authority to consent to surgical and medical treatment of certain minors.

A. Whenever any minor who has been separated from the custody of his parent or guardian is in need of surgical or medical treatment, authority commensurate with that of a parent in like cases is conferred, for the purpose of giving consent to such surgical or medical treatment, as follows:

1. Upon judges with respect to minors whose custody is within the control of their respective courts.

2. Upon local ~~superintendents of public welfare or~~ *directors of* social services or their designees with respect to (i) minors who are committed to the care and custody of the local board by courts of competent jurisdiction, (ii) minors who are taken into custody pursuant to § ~~63.1-248.9~~ *63.2-1517*, and (iii) minors who are entrusted to the local board by the parent, parents or guardian, when the consent of the parent or guardian cannot be obtained immediately and, in the absence of such consent, a court order for such treatment cannot be obtained immediately.

3. Upon the Director of the Department of Corrections or the Director of the Department of Juvenile Justice or his designees with respect to any minor who is sentenced or committed to his custody.

4. Upon the principal executive officers of state institutions with respect to the wards of such institutions.

5. Upon the principal executive officer of any other institution or agency legally qualified to receive minors for care and maintenance separated from their parents or guardians, with respect to any minor whose custody is within the control of such institution or agency.

6. Upon any person standing in loco parentis, or upon a conservator or custodian for his ward or other charge under disability.

B. Whenever the consent of the parent or guardian of any minor who is in need of surgical or medical treatment is unobtainable because such parent or guardian is not a resident of this Commonwealth or his whereabouts is unknown or he cannot be consulted with promptness reasonable under the circumstances, authority commensurate with that of a parent in like cases is conferred, for the purpose of giving consent to such surgical or medical treatment, upon judges of juvenile and domestic relations district courts.

C. Whenever delay in providing medical or surgical treatment to a minor may adversely affect such minor's recovery and no person authorized in this section to consent to such treatment for such minor is available within a reasonable time under the circumstances, no liability shall be imposed upon qualified emergency medical services personnel as defined in § 32.1-111.1 at the scene of an accident, fire or other emergency, a licensed health professional, or a licensed hospital by reason of lack of consent to such medical or surgical treatment. However, in the case of a minor fourteen years of age or older who is physically capable of giving consent, such consent shall be obtained first.

D. Whenever delay in providing transportation to a minor from the scene of an accident, fire or other emergency prior to hospital admission may adversely affect such minor's recovery and no person authorized in this section to consent to such transportation for such minor is available within a reasonable time under the circumstances, no liability shall be imposed upon emergency medical services personnel as defined in § 32.1-111.1, by reason of lack of consent to such transportation. However, in the case of a minor fourteen years of age or older who is physically capable of giving consent, such consent shall be obtained first.

E. A minor shall be deemed an adult for the purpose of consenting to:

1. Medical or health services needed to determine the presence of or to treat venereal disease or any infectious or contagious disease which the State Board of Health requires to be reported;

2. Medical or health services required in case of birth control, pregnancy or family planning except for the purposes of sexual sterilization;

3. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for substance abuse as defined in § 37.1-203;

4. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for mental illness or emotional disturbance; or

5. The release of medical records related to subdivisions 1 and 2.

F. Except for the purposes of sexual sterilization, any minor who is or has been married shall be deemed an adult for the purpose of giving consent to surgical and medical treatment.

G. A pregnant minor shall be deemed an adult for the sole purpose of giving consent for herself and her child to surgical and medical treatment relating to the delivery of her child when such surgical or medical treatment is provided during the delivery of the child or the duration of the hospital admission for such delivery; thereafter, the minor mother of such child shall also be deemed an adult for the purpose of giving consent to surgical and medical treatment for her child.

H. Any minor seventeen years of age may, with the consent of a parent or legal guardian, consent to donate blood and may donate blood if such minor meets donor eligibility requirements. However, parental consent to donate blood by any minor seventeen years of age shall not be required if such minor receives no consideration for his blood donation and the procurer of the blood is a nonprofit, voluntary organization.

I. Any judge, local ~~superintendent of public welfare or~~ *director of* social services, Director of the Department of Corrections, Director of the Department of Juvenile Justice, or principal executive officer of any state or other institution or agency who consents to surgical or medical treatment of a minor in accordance with this section shall make a reasonable effort to notify the minor's parent or guardian of such action as soon as practicable.

J. Nothing in subsection G ~~of this section~~ shall be construed to permit a minor to consent to an abortion without complying with § 16.1-241.

§ 58.1-3. Secrecy of information; penalties.

A. Except in accordance with a proper judicial order or as otherwise provided by law, the Tax Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or

revenue officer or employee, or any person to whom tax information is divulged pursuant to § 58.1-2712.2, or any former officer or employee of any of the aforementioned offices shall not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation. Such prohibition specifically includes any copy of a federal return or federal return information required by Virginia law to be attached to or included in the Virginia return. Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor. The provisions of this subsection shall not be applicable, however, to:

1. Matters required by law to be entered on any public assessment roll or book;

2. Acts performed or words spoken or published in the line of duty under the law;

3. Inquiries and investigations to obtain information as to the process of real estate assessments by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information obtained shall be privileged;

4. The sales price, date of construction, physical dimensions or characteristics of real property, or any information required for building permits;

5. Copies of or information contained in an estate's probate tax return, filed with the clerk of court pursuant to § 58.1-1714, when requested by a beneficiary of the estate or an heir at law of the decedent.

B. Nothing contained in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the publication of delinquent lists showing the names of taxpayers who are currently delinquent, together with any relevant information which in the opinion of the Department may assist in the collection of such delinquent taxes. This section shall not be construed to prohibit a local tax official from disclosing whether a person, firm or corporation is licensed to do business in that locality and divulging, upon written request, the name and address of any person, firm or corporation transacting business under a fictitious name. Additionally, notwithstanding any other provision of law, the commissioner of revenue is authorized to provide, upon written request stating the reason for such request, the Tax Commissioner with information obtained from local tax returns and other information pertaining to the income, sales and property of any person, firm or corporation licensed to do business in that locality.

C. Notwithstanding the provisions of subsection A or B or any other provision of this title, the Tax Commissioner is authorized to: (i) divulge tax information to any commissioner of the revenue, director of finance or other similar collector of county, city or town taxes who, for the performance of his official duties, requests the same in writing setting forth the reasons for such request; (ii) provide to the Commissioner of the Department of Social Services, upon written request, information on the amount of income reported by persons on their state income tax returns who have applied for public assistance *or social services* benefits as defined in § ~~63.1-87~~ *63.2-100*; (iii) provide to the chief executive officer of the designated student loan guarantor for the Commonwealth of Virginia, upon written request, the names and home addresses of those persons identified by the designated guarantor as having delinquent loans guaranteed by the designated guarantor; (iv) provide current address information upon request to state agencies and institutions for their confidential use in facilitating the collection of accounts receivable, and to the clerk of a circuit or district court for their confidential use in facilitating the collection of fines, penalties and costs imposed in a proceeding in that court; (v) provide to the Commissioner of the Virginia Employment Commission, after entering into a written agreement, such tax information as may be necessary to facilitate the collection of unemployment taxes and overpaid benefits; (vi) provide to the Alcoholic Beverage Control Board, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of state and local taxes and the administration of the alcoholic beverage control laws; (vii) provide to the Director of the State Lottery Department such tax information as may be necessary to identify those lottery ticket retailers who owe delinquent taxes; (viii) provide to the Department of the Treasury for its confidential use such tax information as may be necessary to facilitate the location of owners of unclaimed property; (ix) provide to the State Corporation Commission, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of taxes and fees administered by the Commission; (x) provide to the Executive Director of the Potomac and Rappahannock Transportation Commission for its confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; (xi) provide to the Executive Secretary of the Charitable Gaming Commission such tax information as may be necessary to identify those applicants for registration as a supplier of charitable gaming supplies who have not filed required returns or who owe delinquent taxes; (xii) provide to the Department of Housing and Community Development for its confidential use such tax information as may be necessary to facilitate the administration of the Enterprise Zone Act (§ 59.1-270 et seq.); (xiii) provide current name and address information to private collectors entering into a written agreement with the Tax Commissioner, for their confidential use when acting on behalf of the Commonwealth or any of its political subdivisions; however, the Tax Commissioner is not authorized to

provide such information to a private collector who has used or disseminated in an unauthorized or prohibited manner any such information previously provided to such collector; and (xiv) provide current name and address information as to the identity of the wholesale or retail dealer that affixed a tax stamp to a package of cigarettes to any person who manufactures or sells at retail or wholesale cigarettes and who may bring an action for injunction or other equitable relief for violation of Chapter 10.1, Enforcement of Illegal Sale or Distribution of Cigarettes Act. The Tax Commissioner is further authorized to enter into written agreements with duly constituted tax officials of other states and of the United States for the inspection of tax returns, the making of audits, and the exchange of information relating to any tax administered by the Department of Taxation. Any person to whom tax information is divulged pursuant to this section shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

D. Notwithstanding the provisions of subsection A or B or any other provision of this title, the commissioner of revenue or other assessing official is authorized to (i) provide, upon written request stating the reason for such request, the chief executive officer of any county or city with information furnished to the commissioner of revenue by the Tax Commissioner relating to the name and address of any dealer located within the county or city who paid sales and use tax, for the purpose of verifying the local sales and use tax revenues payable to the county or city; (ii) provide to the Department of Professional and Occupational Regulation for its confidential use the name, address, and amount of gross receipts of any person, firm or entity subject to a criminal investigation of an unlawful practice of a profession or occupation administered by the Department of Professional and Occupational Regulation, only after the Department of Professional and Occupational Regulation exhausts all other means of obtaining such information; and (iii) provide to any representative of a condominium unit owners' association, property owners' association or real estate cooperative association, or to the owner of property governed by any such association, the names and addresses of parties having a security interest in real property governed by any such association; however, such information shall be released only upon written request stating the reason for such request, which reason shall be limited to proposing or opposing changes to the governing documents of the association, and any information received by any person under this subsection shall be used only for the reason stated in the written request. The treasurer or other local assessing official may require any person requesting information pursuant to clause (iii) of this subsection to pay the reasonable cost of providing such information. Any person to whom tax information is divulged pursuant to this subsection shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

This section shall not be construed to prohibit a local tax official from imprinting or displaying on a motor vehicle local license decal the year, make, and model and any other legal identification information about the particular motor vehicle for which that local license decal is assigned.

E. Notwithstanding any other provisions of law, state agencies and any other administrative or regulatory unit of state government shall divulge to the Tax Commissioner or his authorized agent, upon written request, the name, address, and social security number of a taxpayer, necessary for the performance of the Commissioner's official duties regarding the administration and enforcement of laws within the jurisdiction of the Department of Taxation. The receipt of information by the Tax Commissioner or his agent which may be deemed taxpayer information shall not relieve the Commissioner of the obligations under this section.

F. Additionally, it shall be unlawful for any person to disseminate, publish, or cause to be published any confidential tax document which he knows or has reason to know is a confidential tax document. A confidential tax document is any correspondence, document, or tax return that is prohibited from being divulged by subsection A, B, C, or D of this section or by § 59.1-282.4. This prohibition shall not apply if such confidential tax document has been divulged or disseminated pursuant to a provision of law authorizing disclosure. Any person violating the provisions of this subsection shall be guilty of a Class 2 misdemeanor.

§ 58.1-439.9. Tax credit for certain employers hiring recipients of Temporary Assistance for Needy Families.

A. As used in this section:

"Qualified business employer" means an employer whose business employed not more than 100 employees at the time that the employer first hired a qualified employee.

"Qualified employee" means an employee who is a Virginia resident and is a recipient of Temporary Assistance ~~to~~ *for* Needy Families (TANF) in accordance with the provisions of Chapter 6 (§ ~~63.1-86~~ *63.2-600* et seq.) of Title ~~63.1~~ *63.2*.

B. For taxable years beginning on and after January 1, 1999, a qualified business employer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3 of this title in an amount equal to five percent of the annual salary actually paid during the taxable year to a qualified employee. However, the annual amount of the credit

shall not exceed $750 per qualified employee. Qualified business employers entitled to the credit pursuant to this section shall provide written evidence, satisfactory to the Tax Commissioner, of employing such qualified employee for the taxable year in which the credit is claimed.

C. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

D. Any credit not usable for the taxable year may be carried over for the next three taxable years. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. No credit shall be carried back to a preceding taxable year. If a qualified business employer that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of this Code, or has a credit carryover from a preceding taxable year, such employer shall be considered to have first utilized any credit allowed which does not have a carryover provision, and then any credit which is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

E. The amount of tax credits available under this section in any fiscal year~~, when added to the amount of grants made to employers under the Virginia Targeted Jobs Grant Program established under § 63.1-25.3 in such year,~~ shall not exceed the amount appropriated ~~to the Virginia Targeted Jobs Grant Fund~~ for such year as provided in the general appropriation act.

F. ~~Prior to December 31, 1998,~~ The State Board of Social Services shall promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) ~~(i)~~ establishing procedures for claiming the tax credit provided by this section ~~and (ii) providing for the allocation of tax credits among taxpayers requesting credits and employers claiming grants under the Virginia Targeted Jobs Grant Program, on a pro rata basis, in the event the amount of credits and grants for which requests are made exceeds the available amount of funds appropriated to the Virginia Targeted Jobs Grant Fund for any fiscal year~~.

~~G. No qualified business employer shall be eligible to claim a credit under this section for any taxable year such employer is the recipient of a grant for the same qualified employee under the Virginia Targeted Jobs Grant Program (§ 63.1-25.3).~~

§ 58.1-3134. Warrants must be presented within two years.

No warrant or order drawn on any treasurer by the governing body, school board, local board of ~~public welfare or~~ social services or circuit court shall be paid by the treasurer, unless the warrant or order is presented to be paid and registered in the warrant book within two years from the date of the drawing of the warrant.

§ 59.1-21.21:1. Prohibited discrimination; notification of action on credit application; statement of reasons for adverse action.

~~(a)~~ *A.* It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction:

~~(1)~~ *1.* On the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);

~~(2)~~ *2.* Because all or part of the applicant's income derives from any public assistance *or social services* program.

~~(b)~~ *B.* It shall not constitute discrimination for purposes of this chapter for a creditor:

~~(1)~~ *1.* To make an inquiry of marital status if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of creditworthiness;

~~(2)~~ *2.* To make an inquiry of the applicant's age or of whether the applicant's income derives from any public assistance *or social services* program if such inquiry is for the purpose of determining the amount and probable continuance of income levels, credit history, or other pertinent element of creditworthiness as provided in regulations of the State Corporation Commission;

~~(3)~~ *3.* To use any empirically derived credit system which considers age if such system is demonstrably and statistically sound in accordance with regulations of the State Corporation Commission, except that in the operation of such system the age of an elderly applicant may not be assigned a negative factor or value; or

~~(4)~~ *4.* To make an inquiry or to consider the age of an elderly applicant when the age of such applicant is to be used by the creditor in the extension of credit in favor of such applicant.

~~(c)~~ *C.* It is not a violation of this section for a creditor to refuse to extend credit offered pursuant to:

~~(1)~~ *1.* Any credit assistance program expressly authorized by law for an economically disadvantaged class of persons;

~~(2)~~ *2.* Any credit assistance program administered by a nonprofit organization for its members or an economically disadvantaged class of persons; or

~~(3)~~ *3.* Any special purpose credit program offered by a profit-making organization to meet special social needs which meets standards prescribed in regulations by the State Corporation Commission; if such refusal is required by or made pursuant to such program.

~~(d)~~ *D.* ~~(1)~~ *1.* Within thirty days (or such longer reasonable time as specified in regulations of the State Corporation Commission for any class of credit transaction) after receipt of a completed application for credit, a creditor shall notify the applicant of its action on the application.

~~(2)~~ *2.* Each applicant against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor. A creditor satisfies this obligation by:

~~(A)~~ *a.* Providing statement of reasons in writing as a matter of course to applicants against whom adverse action is taken; or

~~(B)~~ *b.* Giving written notification of adverse action ~~which~~ *that* discloses (i) the applicant's right to a statement of reasons within thirty days after receipt by the creditor of a request made within sixty days after such notification, and (ii) the identity of the person or office from which such statement may be obtained. Such statement may be given orally if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.

~~(3)~~ *3.* A statement of reasons meets the requirements of this section only if it contains the specific reasons for the adverse action taken.

~~(4)~~ *4.* Where a creditor has been requested by a third party to make a specific extension of credit directly or indirectly to an applicant, the notification and statement of reasons required by this subsection may be made directly by such creditor, or indirectly through the third party, provided in either case that the identity of the creditor is disclosed.

~~(5)~~ *5.* The requirements of subdivision ~~(2)~~ *2*, ~~(3)~~ *3*, or ~~(4)~~ *4* may be satisfied by verbal statements or notifications in the case of any creditor who did not act on more than 150 applications during the calendar year preceding the calendar year in which the adverse action is taken, as determined under regulations of the State Corporation Commission.

TITLE 63.2.

WELFARE (SOCIAL SERVICES).

Subtitle I.

General Provisions Relating To Social Services.

CHAPTER 1.

GENERAL PROVISIONS.

§ 63.2-100. Definitions.

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

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

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;

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;

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; or

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.

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

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

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult.

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

supplementary care and protection to a combined total of four or more aged, infirm or disabled adults.

"Adult exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage.

"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 neglect" means that an adult 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.

"Adult protective services" means services provided by the local department that are necessary to protect an adult 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 Mental Health, Mental Retardation and Substance Abuse 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 eighteen and twenty-one, or twenty-two 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.) of this title, but including any portion of the facility not so licensed; and (iv) any housing project for persons sixty-two 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, including but not limited to, U.S. Department of Housing and Urban Development Sections 8, 202, 221(d) (3), 221(d) (4), 231, 236, or 811 housing, 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 under eighteen years of age.

"Child day center" means a child day program offered to (i) two or more children under the age of thirteen in a facility that is not the residence of the provider or of any of the children in care or (ii) thirteen or more children at any location.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of thirteen for less than a twenty-four-hour period.

"Child-placing agency" means any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to § 63.2-1819 or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903 and 63.2-1221. 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 eighteen 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 day center, child-placing agency, children's residential facility, family day home, family day system, 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, except:

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 day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through twelve children under the age of thirteen, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home shall disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving six through twelve children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.

"Family day system" means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board or the public agency designated by the community policy and management team 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 home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, 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 and (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.

"Independent living" means a program of services and activities for children in foster care who are sixteen years of age or older, and persons who are former foster care children between the ages of eighteen and twenty-one, that prepares them for the successful transition from foster care to self sufficiency.

"Independent living placement" means placement of a child at least sixteen years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"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.

"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 Department of Health and Human Services.

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

"Registered family day home" means any family day home that has met the standards for voluntary registration for such homes pursuant to regulations adopted by the Board and that has obtained a certificate of registration from the Commissioner.

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

"Social services" means foster care, adoption, adoption assistance, adult services, adult protective services, child-protective services, domestic violence services, or any other services program implemented in accordance with regulations adopted by the Board.

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

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

"Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the Temporary Assistance for Needy Families program for families in which both natural or adoptive parents of a child reside in the home and neither parent is exempt from the Virginia Initiative for Employment Not Welfare (VIEW) participation under § 63.2-609.

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

§ 63.2-101. Authority of Department to request and receive information from other agencies; use of information so obtained.

The Department may request and shall receive from the records of all departments, boards, bureaus

or other agencies of this Commonwealth and of other states such information as is necessary for the purpose of carrying out the provisions and programs of this title, and the same are authorized to provide such information; provided that, a written statement from the requesting party stating the reason for seeking such record is submitted and filed with the record sought. The Department may make such information available only to public officials and agencies of this Commonwealth, and other states, and political subdivisions of this Commonwealth and other states, where the request for information relates to administration of the various public assistance or social services programs.

§ 63.2-102. Allowing access to records and information for public assistance programs and child support enforcement; penalty.

A. All records, information and statistical registries of the Department and local boards and other information that pertain to public assistance and child support enforcement provided to or on behalf of any individual shall be confidential and shall not be disclosed except to persons specified hereinafter and to the extent permitted by state and federal law and regulation. The local boards shall allow the Commissioner, at all times, to have access to the records of the local boards relating to the appropriation, expenditure and distribution of funds for, and other matters concerning, public assistance under this title.

Except as provided by state and federal law and regulation, no record, information or statistical registries concerning applicants for and recipients of public assistance and child support shall be made available except for purposes directly connected with the administration of such programs. Such purposes include establishing eligibility, determining the amount of the public assistance and child support, and providing social services for applicants and recipients. It shall be unlawful for any person to disclose, directly or indirectly, any such confidential information, and any person violating these provisions shall be guilty of a Class 1 misdemeanor.

B. If a request for a record or information concerning applicants for and recipients of public assistance or child support is made to the Department or a local department for a purpose not directly connected to the administration of such programs, the Commissioner or local director shall not provide the record or information unless permitted by state or federal law or regulation.

§ 63.2-103. Confidential records and information concerning child support enforcement.

Any records established pursuant to the provisions of § 63.2-1902 shall be available only for the enforcement of support of children and their caretakers and to the Attorney General, prosecuting attorneys, law-enforcement agencies, courts of competent jurisdiction and agencies in other states engaged in the enforcement of support of children and their caretakers. Information pertaining to actions taken on behalf of recipients of child support services may be disclosed to the recipient and other parties pursuant to Board regulations. The Board shall adopt regulations regarding the release of information to parties involved in administrative proceedings pursuant to Chapter 19 (§ 63.2-1900 et seq.) of this title, taking into account the health and safety of the parties to whom the information is related, and such releases of information shall be permitted, notwithstanding the provisions of the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.). Information may also be disclosed to authorized persons, in accordance with 42 U.S.C. § 663, in cases of unlawful taking or restraint of a child.

§ 63.2-104. Confidential records and information concerning social services; penalty.

A. The records, information and statistical registries of the Department, local departments and of all child-welfare agencies concerning social services to or on behalf of individuals shall be confidential information, provided that the Commissioner, the Board and their agents shall have access to such records, information and statistical registries, and that such records, information and statistical registries may be disclosed to any person having a legitimate interest in accordance with state and federal law and regulation.

It shall be unlawful for any officer, agent or employee of any child-welfare agency; for the Commissioner, the State Board or their agents or employees; for any person who has held any such position; and for any other person to whom any such record or information is disclosed to disclose, directly or indirectly, any such confidential record or information, except as herein provided or pursuant to § 63.2-105. Every violation of this section shall constitute a Class 1 misdemeanor.

B. If a request for a record or information concerning applicants for and recipients of social services is made to the Department or a local department by a person who does not have a legitimate interest, the Commissioner or local director shall not provide the record or information unless permitted by state or federal law or regulation.

C. This section shall not apply to the disposition of adoption records, reports and information that is governed by the provisions of § 63.2-1246.

§ 63.2-105. Confidential records and information concerning social services; child-protective services and child-placing agencies.

A. The local department may disclose the contents of records and information learned during the

course of a child-protective services investigation or during the provision of child-protective services to a family, without a court order and without the consent of the family, to a person having a legitimate interest when in the judgment of the local department such disclosure is in the best interest of the child who is the subject of the records. Persons having a legitimate interest in child-protective services records of local departments include, but are not limited to, (i) any person who is responsible for investigating a report of known or suspected abuse or neglect or for providing services to a child or family that is the subject of a report, including multi-disciplinary teams and family assessment and planning teams referenced in subsection J of § 63.2-1503, law-enforcement agencies and attorneys for the Commonwealth; (ii) child welfare or human services agencies of the Commonwealth or its political subdivisions when those agencies request information to determine the compliance of any person with a child-protective services plan or an order of any court; (iii) personnel of the school or child day program as defined in § 63.2-100 attended by the child so that the local department can receive information from such personnel on an ongoing basis concerning the child's health and behavior, and the activities of the child's custodian; and (iv) a parent, grandparent, or any other person when such parent, grandparent or other person would be considered by the local department as a potential caretaker of the child in the event the local department has to remove the child from his custodian.

Whenever a local department exercises its discretion to release otherwise confidential information to any person who meets one or more of these descriptions, the local department shall be presumed to have exercised its discretion in a reasonable and lawful manner.

B. Any person who has not been legally adopted in accordance with the provisions of this title and who was a child for whom all parental rights and responsibilities have been terminated, shall not have access to any information from a child-placing agency with respect to the identity of the biological family, except (i) upon application of the child who is eighteen or more years of age, (ii) upon order of a circuit court entered upon good cause shown, and (iii) after notice to and opportunity for hearing by the applicant for such order and the child-placing agency or local board that had custody of the child.

An eligible person who is a resident of Virginia may apply for the court order provided for herein to (a) the circuit court of the county or city where the person resides or (b) the circuit court of the county or city where the principal office of the child-placing agency or local board that controls the information sought by the person is located. An eligible person who is not a resident of Virginia shall apply for such a court order to the circuit court of the county or city where the principal office of the child-placing agency or local board that controls the information sought by the person is located.

If the identity and whereabouts of the biological family are known to the agency or local board, the court may require the agency or local board to advise the biological parents of the pendency of the application for such order. In determining good cause for the disclosure of such information, the court shall consider the relative effects of such action upon the applicant for such order and upon the biological parents.

§ 63.2-106. Failure to obey subpoena or charging illegal fees; penalty.

If any person fails or refuses to obey any subpoena issued under the provisions of § 63.2-220 or § 63.2-322, or charges or receives any fee contrary to the provisions of § 63.2-508, he shall be guilty of a Class 1 misdemeanor.

CHAPTER 2.
STATE SOCIAL SERVICES.
Article 1.
Department and Commissioner of Social Services.

§ 63.2-200. Department of Social Services created.

The Department of Social Services is hereby created in the executive branch responsible to the Governor. The Department shall be under the supervision and management of the Commissioner of Social Services.

§ 63.2-201. Appointment of Commissioner.

The Commissioner of Social Services, shall be appointed by the Governor, subject to confirmation by the General Assembly, if in session when the appointment is made, and if not in session, then at its next succeeding session.

§ 63.2-202. Term of office; vacancies.

The Commissioner shall hold office at the pleasure of the Governor for a term coincident with that of each Governor making the appointment, or until his successor is appointed and qualified. Vacancies shall be filled in the same manner as original appointments are made.

§ 63.2-203. Powers and duties of Commissioner generally.

A. The Commissioner, subject to the regulations of the Board, shall have all of the powers and perform all the duties conferred upon him by law. Except as otherwise provided, he shall supervise the administration of the provisions of this title and shall see that all laws pertaining to the Department are carried out to their true intent and spirit.

B. The Commissioner shall enforce the regulations adopted by the Board.

§ 63.2-204. Cooperation with local authorities.

The Commissioner shall assist and cooperate with local authorities in the administration of this title. He shall encourage and direct the training of all personnel of local boards and local departments engaged in the administration of any program within the purview of this title or Chapter 11 (§ 16.1-226 et seq.) of Title 16.1. The Commissioner shall collect and publish statistics and such other data as may be deemed of value in assisting the public authorities and other social agencies of the Commonwealth in improving the care of these persons and in correcting conditions that contribute to dependency and delinquency. The Commissioner shall also, in his discretion, initiate and conduct conferences designed to accomplish such ends and to further coordination of effort in this field.

§ 63.2-205. Requiring reports from local boards; forms and submission schedule; approval of budgets by Commissioner.

A. The Commissioner shall require of local boards such reports relating to the administration of this title as the Commissioner may deem necessary to enable the Board and the Commissioner to exercise and perform the functions, duties and powers conferred and imposed by this title. He shall prescribe the form and submission schedule of applications, reports, affidavits, budgets and budget exhibits, and such other forms as may be required in the administration of this title.

B. The Commissioner shall review budget requests submitted by local boards, make modifications consistent with the requirements of this title and transmit the approved budget to each local board.

§ 63.2-206. Cooperation with federal agencies.

The Commissioner shall cooperate with the Department of Health and Human Services and other agencies of the United States and with the local boards, in relation to matters set forth in this title, and in any reasonable manner that may be necessary for this Commonwealth to qualify for and to receive grants or aid from such federal agencies for public assistance and services in conformity with the provisions of this title, including grants or aid to assist in providing rehabilitation and other services to help individuals to attain or retain capability for self-care or self-support and such services as are likely to prevent or reduce dependency and, in the case of dependent children, to maintain and strengthen family life. The Commissioner shall make such reports in such form and containing information as such agencies of the United States may require and shall comply with such provisions as such agencies require to assure the correctness and verification of such reports.

§ 63.2-207. Authority to receive grants-in-aid, funds and gifts.

The Commissioner is authorized to receive, for and on behalf of the Commonwealth and its subdivisions, from the United States and agencies thereof, and from any and all other sources, grants-in-aid, funds and gifts, made for the purpose of providing, or to assist in providing, for funds for child welfare services including day care for children, disaster relief and emergency assistance awards, Temporary Assistance for Needy Families, and general relief, or any of them, including expenses of administration. Subject to the written approval of the Governor, the Commissioner is also authorized to receive from all such sources grants-in-aid, funds and gifts made for the purpose of alleviating, treating or preventing poverty, delinquency or other social problems encountered in programs under the supervision or administration of the Commissioner. All such funds shall be paid into the state treasury.

§ 63.2-208. Standards for personnel.

The Commissioner shall enforce the minimum education, professional and training requirements and performance standards as determined by the Board for personnel employed in the administration of this title and remove each employee who does not meet such standards.

§ 63.2-209. Divisions of Department.

The Commissioner shall establish in the Department such divisions and regional offices as may be necessary.

§ 63.2-210. Appointment of division heads.

The Commissioner shall appoint heads of the divisions, subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2.

§ 63.2-211. Powers and duties of division heads.

The Commissioner may delegate to the heads of the various divisions and to such other employees of the Department as he deems desirable any and all of the powers and duties conferred upon him by law.

§ 63.2-212. Employment of agents and employees.

The Commissioner may, subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2, employ or authorize the employment of such agents and employees as may be needed by the Commissioner and the Department in the exercise of the functions, duties and powers conferred and imposed by law upon him and the Department, and in order to effect a proper organization and to carry out its duties.

§ 63.2-213. Powers, duties, titles and functions of agents and employees.

The functions, duties, powers and titles of the agents and employees provided for in § 63.2-213, and

their salaries and remuneration, not in excess of the amount provided therefor by law, shall be fixed by the Commissioner, subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2.

§ 63.2-214. Bonds of such agents.

Proper bonds shall be required of all agents and employees who handle any funds which may come into custody of the Department. The premiums on the bonds shall be paid from funds appropriated by the Commonwealth for the administration of the activities of the Department.

Article 2.

State Board of Social Services.

§ 63.2-215. State Board of Social Services.

There shall be a State Board of Social Services consisting of nine members appointed by the Governor. In making appointments the Governor shall endeavor to select appointees of such qualifications and experience that the membership of the Board shall include persons suitably qualified to consider and act upon the various problems that the Board may be required to consider and act upon. The Board shall include a member from each of the social services regions of the state established by the Commissioner and one member shall be a licensed health care professional. The appointments shall be subject to confirmation by the General Assembly if in session and, if not, then at its next succeeding session.

The members of the Board shall be appointed for four-year terms, except that appointments to fill vacancies shall be for the unexpired term.

No person shall be eligible to serve for or during more than two successive terms; however, any person appointed to fill a vacancy may be eligible for two additional successive terms after the term of the vacancy for which he was appointed has expired. Members of the Board may be suspended or removed by the Governor at his pleasure.

The Board shall select a chairman from its membership, and under rules adopted by itself may elect one of its members as vice-chairman. It shall elect one of its members as secretary.

The Board shall meet at such times as it deems appropriate and on call of the chairman when in his opinion meetings are expedient or necessary; provided, however, that the Board shall meet at least six times each calendar year.

A majority of the current membership of the Board shall constitute a quorum for all purposes.

The main office of the Board shall be in the City of Richmond.

No director, officer or employee of an institution subject to the provisions of this title shall be appointed a member of the Board.

§ 63.2-216. Powers and duties of Board in general.

In addition to such other duties as are assigned to it, the Board shall act in a capacity advisory to the Commissioner, and when requested shall confer and advise with him upon such matters as may arise in the performance of his duties. When requested by the Commissioner, or by the Governor, the Board shall investigate such questions and consider such problems as they, or either of them, may submit and shall report their findings and conclusions. The Board may also initiate investigations and consider problems and make recommendations to the Commissioner or to the Governor, of its own motion.

§ 63.2-217. Board to adopt regulations.

The Board shall adopt such regulations, not in conflict with this title, as may be necessary or desirable to carry out the purpose of this title. Before the Board acts on a regulation to be published in the Virginia Register of Regulations pursuant to § 2.2-4007, the Board shall examine the potential fiscal impact of such regulation on local boards. For regulations with potential fiscal impact, the Board shall share copies of the fiscal analysis with local boards prior to submission of the regulation to the Department of Planning and Budget for purposes of the economic impact analysis under subsection G of § 2.2-4007. The fiscal impact analysis shall include the projected costs and savings to the local boards to implement or comply with such regulation and, where applicable, sources of potential funds to implement or comply with such regulation.

The Board also may adopt such regulations to authorize local boards to destroy or otherwise dispose of such records as the local boards in their discretion deem are no longer necessary in such offices and that serve no further administrative, historical or financial purpose.

§ 63.2-218. Board to adopt regulations regarding human research.

The Board shall adopt regulations to effectuate the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research, as defined in § 32.1-162.16, to be conducted or authorized by the Department, any agency or facility licensed by the Department, or any local department. The regulations shall require the human research committee to submit to the Governor, the General Assembly, and the Commissioner at least annually a report on the human research projects reviewed and approved by the committee and shall require the committee to report any significant deviations from the proposals as approved.

§ 63.2-219. Board to establish employee entrance and performance standards.

The Board shall establish minimum education, professional and training requirements and performance standards for the personnel employed by the Commissioner and local boards in the administration of this title and adopt regulations to maintain such education, professional and training requirements and performance standards, including such regulations as may be embraced in the development of a system of personnel administration meeting requirements of the Department of Health and Human Services under appropriate federal legislation relating to programs administered by the Board. The Board shall adopt minimum education, professional and training requirements and performance standards for personnel to provide public assistance or social services.

The Board shall provide that the Department and its local boards or local departments shall not employ any person in any social work position that provides direct client services unless that person holds at least a baccalaureate degree. Such requirement shall not be waived by the Department, Board, or any local director or local governing body, unless such person has been employed prior to January 1, 1999, by the Department or its local boards or local departments in a social work position that provides direct client services.

The state grievance procedure adopted pursuant to Chapter 10 (§ 2.2-1000 et seq.) of Title 2.2 shall apply to the personnel employed by the Commissioner and employees, including local directors, of the local boards and local departments, unless the local governing body elects to include employees of local departments and local boards under the grievance procedure adopted pursuant to § 15.2-1506.

§ 63.2-220. Board may administer oaths, conduct hearings and issue subpoenas.

The Board in the exercise and performance of its functions, duties and powers under the provisions of this title is authorized to hold and conduct hearings, issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents, to administer oaths and to take testimony thereunder.

§ 63.2-221. Board to investigate institutions at direction of Governor.

Whenever the Governor considers it proper or necessary to investigate the management of any institution licensed by or required to be inspected by the Board under the provisions of this title, he may direct the Board, or any committee or agent thereof, to make the investigation. The Board, committee or agent designated by the Governor shall have power to administer oaths and to summon officers, employees or other persons to attend as witnesses and to enforce their attendance and to compel them to produce documents and give evidence.

Article 3.

Statewide Human Services Information and Referral Program.

§ 63.2-222. Establishment of system.

There shall be created a statewide human services information and referral system designed to:

1. Collect and maintain accurate and complete resource data on a statewide basis;

2. Link citizens needing human services with appropriate community resources to satisfy those needs;

3. Assist in planning for human services delivery at the local, regional and state levels; and

4. Provide information to assist decision-makers in allocating financial and other resources to respond to state and local human service priorities.

§ 63.2-223. Creation of Council.

There is hereby created in the executive branch of the state government the Human Services Information and Referral Advisory Council, hereinafter referred to as the "Council."

§ 63.2-224. Members of Council; terms; vacancies; chairman.

A. The Council shall consist of no more than twenty-five members, to be appointed by the Governor as follows:

Three citizens at large, one of whom is a consumer of human services and one of whom has a disability; two representatives from business or industry or both; two representatives of local government representing one rural and one urban locality; one representative of United Way of Virginia; one representative from the Virginia Cooperative Extension Services; one representative from The Library of Virginia; one representative of the armed services residing in Virginia; one representative from the information and referral regional providers; one labor representative; one representative from each of the six information and referral centers' regional boards and one representative from the Virginia Association of Community Action Agencies.

B. Members of the Council shall be appointed for four-year terms except that persons appointed to fill vacancies shall be appointed for the unexpired term.

C. Persons appointed to the Council shall be knowledgeable about the development and implementation of information and referral programs and the services to be provided by the program.

D. The chairman of the Council shall be appointed by the Governor from its membership.

§ 63.2-225. Duties of Council.

A. The Council shall recommend standards and policies for the development and implementation of a statewide human services information and referral system to provide information on or referral to

appropriate public and private, state, local and regional agencies. Such standards and policies shall include but need not be limited to those related to:

1. The scope of information and referral services to be provided by the system;

2. Manner of regionalization and localization of information and referral, including selection of regional providers and boundaries of each region with consideration given existing information and referral programs;

3. Resource data collection, indexing and maintenance;

4. Data processing requirements;

5. Publicizing of services;

6. Sharing of resource information with state agencies and their affiliates; and

7. Costs and financing.

B. The Council shall review the plans for the design and implementation of the information and referral program developed by the Department.

C. The Council shall advise and make recommendations to the Commissioner on matters relating to the operation and procedures of the information and referral system.

D. The Council shall make recommendations to the Secretary of Health and Human Resources and to the Commissioner regarding regulations governing the operations of the system.

E. The Council shall review the program developed by the Department for monitoring and assessing the performance of the information and referral program.

F. The Council shall submit a biennial report to the Governor evaluating the effectiveness of the information and referral program.

G. The Council shall meet at least once each year, no later than October 1 of each year.

§ 63.2-226. Duties of Department.

The Department shall assume administrative responsibilities for the statewide system in conformance with standards and policies recommended by the Council. In this capacity, the Department shall establish an office to:

1. Provide staff support to the Council;

2. Develop a plan for the design and implementation of a statewide human services information and referral program conforming to the standards and policies recommended by the Council and submit the plan to the Council for review;

3. Coordinate and supervise the implementation and operation of the information and referral program;

4. Coordinate funding for the system;

5. Select regional providers of information and referral services;

6. Supervise coordination of information management among information and referral regions across the Commonwealth;

7. Encourage effective relationships between the system and state and local agencies and public and private organizations;

8. Develop and implement a statewide publicity effort;

9. Provide training, technical assistance, research, and consultation for regional and local information and referral centers, and to localities interested in developing information and referral services;

10. Determine a core level of services to be funded from state government resources;

11. Coordinate standardization of resource data collection, maintenance and dissemination;

12. Stimulate and encourage the availability of statewide information and referral services; and

13. Develop and implement a program for monitoring and assessing the performance and success of the information and referral program and present an annual report to the Council evaluating the effectiveness of the system.

§ 63.2-227. Regional providers; duties.

There shall be established a regional system of providers of information and referral services. The Council shall define the boundaries of the regions, and the Department shall select the regional providers according to standards and policies established by the Council.

The regional providers shall:

1. Collect, maintain and disseminate resource data;

2. Provide citizen access to information about resources throughout the Commonwealth;

3. Assist in planning functions by providing selected data to the Department on a regular basis;

4. Provide data to public and private agencies other than the Department on a contractual basis;

5. Cooperate with the state administering agency;

6. Seek funds from available sources;

7. Maintain effective relationships between the system and state and local agencies and public and private organizations; and

8. When feasible and appropriate and within the limits of available funds, establish satellite offices or develop cooperative agreements with local information and referral groups and resource and referral groups that can assist the regional providers in performing their duties and responsibilities.

§ 63.2-228. Technical Assistance Committee created; duties; membership.

A. There is hereby created a Technical Assistance Committee, which shall provide technical and support services on the operations of the information and referral system as the Council may deem appropriate and shall advise the Council in performing its powers and duties.

B. The membership of the Technical Assistance Committee shall include but not be limited to:

1. Two directors of local departments, one serving a rural and one an urban locality, to be appointed by the Commissioner; and

2. The Commissioners or Directors, or their designees, of the Department of Medical Assistance Services; Department of Health; Department of Mental Health, Mental Retardation and Substance Abuse Services; Department of Rehabilitative Services; Department for the Aging; Department for the Blind and Vision Impaired; Department for Rights of Virginians With Disabilities; Department of Information Technology; Department for the Deaf and Hard-of-Hearing; Department of Health Professions; Department of Corrections; Department of Education; Department of Juvenile Justice; and the Virginia Employment Commission.

CHAPTER 3.

LOCAL SOCIAL SERVICES.

Article 1.

Local Boards of Social Services.

§ 63.2-300. Local boards established by local governments.

There shall be a local board in each county and city of the Commonwealth. However, any combination of counties and cities may establish one local board for those jurisdictions as hereinafter provided in this article.

§ 63.2-301. Local board appointments and terms of office.

The members of each local board first appointed shall be appointed initially for terms of from one to four years so as to provide for the balanced overlapping of the terms of the membership thereon and the members of a local board representing more than one county or city shall be appointed initially for such terms, of not less than one nor more than four years, as may be determined by the governing bodies of their respective counties or cities. Subsequent appointments shall be for a term of four years each, except that appointments to fill vacancies that occur during terms shall be for the remainder of those unexpired terms. Appointments to fill unexpired terms shall not be considered full terms, and such persons shall be eligible to be appointed to two consecutive full terms. No person may serve more than two consecutive full terms; however, this section shall not apply where a local government official is constituted to be the local board. A member of a local board who serves two consecutive full terms shall be ineligible for reappointment to such local board until the end of an intervening four-year period dating from the expiration of the last of the two consecutive terms.

§ 63.2-302. How local board for a single county is constituted.

The local board serving a single county shall be, at the discretion of the governing body of the county, either a local government official or a local board consisting of residents of the county who are, except as provided in § 63.2-303, appointed by the governing body of the county. If residents of the county constitute the local board, such board shall consist of three or more members. The governing body shall appoint a member of the board of supervisors to be one member of the local board, except in those cases where the board of supervisors has determined otherwise. When a member of the board of supervisors who was appointed as a member of the local board ceases to be a member of the board of supervisors, his office as a member of the local board shall also be vacated and another member of the board of supervisors shall be appointed to fill such vacancy.

If a local government official constitutes the local board, he may designate a senior staff person in the local department to act in his behalf, in his absence, to approve, cancel or change grants made under the provisions of this title.

§ 63.2-303. Local boards in counties having special forms of county government.

Where the statutes dealing with special forms of county government provide for the appointment of local boards, the provisions of such statutes shall control.

§ 63.2-304. How local board of a city is constituted.

The local board serving a single city shall be, at the discretion of the city council, either a local government official or a local board consisting of five members appointed by the city council of such city in accordance with the provisions of § 63.2-301. If a local government official constitutes the local board, he may designate a senior staff person in the local department to act in his behalf, in his absence, with respect to approving, cancelling or changing grants made under the provisions of this title.

§ 63.2-305. Advisory boards.

A. If the governing body of a city or county or the governing bodies of any combination of cities and counties participating in a district designate, under the provisions of §§ 63.2-302, 63.2-304 or § 63.2-307, a local government official as constituting the local board, such governing body or bodies shall appoint a board to serve in an advisory capacity to such local government official with respect to the duties and functions imposed upon him by this title.

Each such advisory board shall consist of no fewer than five and no more than thirteen members. In the case of an advisory board established for a district, there shall be at least one member on the board from each county and city in the district. The members shall be appointed initially for terms of from one to four years so as to provide for the balanced overlapping of the terms of the membership thereon. Subsequent appointments shall be for a term of four years each, except that appointments to fill vacancies that occur during terms shall be for the remainder of these unexpired terms. Appointments to fill unexpired terms shall not be considered full terms, and such persons shall be eligible to be appointed to two consecutive full terms. No person shall serve more than two consecutive full terms. The local government official shall be an ex officio member, without vote, of the advisory board.

The advisory board shall elect its own chairman and shall meet at least bimonthly. In addition to regularly scheduled meetings, it may meet at the call of the chairman or on the petition of at least one-half of the members.

B. The powers and duties of the advisory board shall be:

1. To interest itself in all matters pertaining to the public assistance and social services needed by people of the political subdivision or subdivisions served by the local department;

2. To monitor the formulation and implementation of public assistance and social services programs by the local department;

3. To meet with the local government official who constitutes the local board at least four times a year for the purpose of making recommendations on policy matters concerning the local department;

4. To make an annual report to the governing body or bodies, concurrent with the budget presentation of the local department, concerning the administration of the public assistance and social services programs; and

5. To submit to the governing body or bodies, from time to time, other reports that the advisory board deems appropriate.

§ 63.2-306. Local boards established by two or more political subdivisions.

The provisions of §§ 63.2-302 and 63.2-304 notwithstanding, the Board, with the prior consent of the Governor, may establish districts consisting of two or more counties or cities or combinations of cities and counties. Except as provided in § 63.2-307, there shall be one district board of not less than three nor more than nine members for each such district. There shall be at least one member of the district board from each county and city in the district. Additional representation from one or more counties or cities within the stipulated maximum may be determined by the Board, with population being the principal factor in such determination. Appointments to the district board shall be made by the governing body of each county and city in the district, upon certification of the establishment of such district by the Board. The Board shall designate the initial term of each district board member to be not less than one nor more than four years in duration, so as to provide for a balanced overlapping of terms. Subsequent appointments shall be for terms of four years each, except appointments to fill a vacancy, which shall be for the unexpired term. Appointments to fill unexpired terms shall not be considered full terms, and such persons shall be eligible to be appointed to two consecutive full terms. No member shall serve for more than two consecutive full terms. A member who serves two consecutive full terms shall be ineligible for reappointment to the district board until the end of an intervening one-year period dating from the expiration of the last of the two consecutive terms. Before requesting the Governor's approval for establishment of any such district, the Board shall consult with the governing body of each county or city that would be included in the district. No county or city shall be included in any such district served by one board unless the local governing body so elects. The district board of any district consisting of two or more counties or cities or combinations of counties and cities shall be considered to be a local board.

Administrative costs of a district board shall be borne by the participating local governments on the basis of population and case load with equal weight being given to each factor or in such manner as the respective governing bodies provide by agreement.

In cases in which a district board includes a county, a member of the board of supervisors of such county may be a member of the local board.

In cases in which a district board includes a city, a member of the council of such city may be a member of the local board, notwithstanding any provision of the charter of any city in force on March 4, 1971.

§ 63.2-307. Local boards serving certain districts.

Notwithstanding the provisions of § 63.2-306:

1. The local board for the York County and City of Poquoson district may be, at the discretion of the governing bodies of the participating city and county, the local director. If such local director serves as the local board, he may designate a senior staff person in the local department to act on his behalf, in his absence, to approve, cancel or change grants made under the provisions of this title.

2. At the discretion of the governing bodies of the participating cities and counties, the local board for a district may be composed of the chief administrative officer of each political subdivision, who may designate his principal assistant to act on his behalf, in his absence, to approve, cancel or change grants made under the provisions of this title.

In addition, the provisions of § 63.2-305 shall apply.

§ 63.2-308. Suspension or removal of members.

Members of any local board may be suspended or removed for cause by the Board or by the local governing body authorized to appoint the members of the local board.

§ 63.2-309. Quorum.

A majority of the members of any local board shall constitute a quorum.

§ 63.2-310. Compensation and expenses.

Each member of the local board of a county or a city or of a district shall be paid his reasonable and necessary expenses incurred in attendance at meetings and while otherwise engaged in the discharge of his duties. In addition to such expenses, the governing body of each city or county may, out of its general fund, pay to each member of the local board, as compensation for his services, an amount to be fixed by the governing body of such city or county. No such county or city shall be reimbursed out of either state or federal funds for any part of such compensation paid.

§ 63.2-311. Fiscal officer for district board; compensation of such officer.

Whenever two or more political subdivisions establish a district pursuant to § 63.2-306 there shall be appointed a district fiscal officer for such district board. The district fiscal officer shall perform all the fiscal functions for the district board that had been previously performed for the local board by the treasurer or other fiscal officer of each locality within the district. The district fiscal officer for such district board shall be the treasurer of one of the participating counties or cities or combination of counties and cities, as mutually agreed upon by the district board with the approval of the governing bodies. In the event the local authorities cannot agree on the selection of a district fiscal officer, the Commissioner shall designate such district fiscal officer. For his services as district fiscal officer, the treasurer shall be paid such salary as may be agreed upon by the district board. In the event the district board and the treasurer so designated cannot agree on such compensation, then the amount of salary to be paid shall be determined by a court of competent jurisdiction and the amount so fixed by the judge shall be binding upon both the treasurer and the district board. Provided, that nothing contained in this section shall affect the regular salary or expense allowance of the treasurer as fixed annually by the State Compensation Board.

§ 63.2-312. Meetings; organization; chairman and vice-chairman; secretary.

The governing body or bodies shall immediately notify the members of the local board of their appointment, and such members shall, within fifteen days after their notification, elect a chairman and vice-chairman from among their number. The local board shall meet at least bimonthly and on other occasions on call of the chairman or in pursuance of action by the local board. At least one such meeting a year shall be an orientation and training session for local board members. The local director shall act as secretary of his local board and shall keep on file minutes of the attendance and transactions at all meetings of the local board.

§ 63.2-313. Administration of law.

The local boards shall, subject to the regulations of the Board, administer the applicable provisions of this title in their respective counties and cities.

§ 63.2-314. Funds received from public or private sources; authority of local governing bodies to make grants; authority of local boards to establish regulations and fees for court ordered services.

A. The local boards are authorized to receive and disburse funds derived from public grants or private sources in the form of gifts, contributions, bequests or legacies for the purpose of aiding needy persons within their respective counties, cities or districts. The governing bodies of counties and cities are authorized to make public grants hereunder to their respective local boards. Eligibility for aid from these sources need not be limited to requirements established for the public assistance programs in this Commonwealth. All funds received from such sources shall be deposited in the treasuries of the respective county, city or local district board to the credit of the county, city or local district board and dispensed as authorized by such county, city or local district board.

B. Local boards may establish regulations and fee schedules and may receive fees for services that a court directs a local department to perform pursuant to § 16.1-274.

§ 63.2-315. Furnishing reports.

The local boards shall furnish to the Commissioner and the governing body of its county or city such reports relating to the administration of this title as the Commissioner and such governing body, respectively, may require.

§ 63.2-316. Submission of budget to governing bodies.

The local boards shall submit annually to the boards of supervisors or city councils of their respective counties and cities a budget, containing an estimate and supporting data setting forth the amount of money needed to carry out the provisions of this title, and a copy thereof shall be forwarded to the Commissioner, subject to the provisions of § 63.2-205.

§ 63.2-317. Employment of counsel for local boards and employees; payment of expenses.

Except in those cases in which the attorney for the Commonwealth or county or city attorney represents the local board, a local board may employ legal counsel in civil matters to give advice to or represent the local board or any of its members or the employees of the local department and may pay court costs and other expenses involved in the conduct of such civil matters from funds appropriated by the local governing body for the administration of the local department. Such counsel may be employed on a part-time basis for any particular action or actions. However, prior approval of the Department shall be obtained by the local board before counsel is employed except in instances where legal counsel is necessary for the provision of services or assistance to eligible recipients under this title.

The Department may reimburse the local board for all or any part of such expenditures at the same rate in effect for all other administrative costs at the time of the expenditure. However, the Department shall not reimburse the local board for any expenses for which payment was available through an insurance policy currently in force.

Where such counsel is employed by the local board, the attorney for the Commonwealth or city attorney or county attorney may be relieved of his responsibility to represent the local board or local department in that matter.

§ 63.2-318. Payment of legal fees and expenses for certain local department employees.

If any employee of a local department is arrested, indicted or otherwise prosecuted on any criminal charge arising out of an act committed in the discharge of his official duties, and the charge is subsequently terminated by entry of an order of dismissal, or nolle prosequi or upon trial he is found not guilty, the local board by which he is employed may reimburse such employee for all or part of the legal fees and expenses incurred by the employee in defense of such charge. The Department may reimburse the local board all or any part of such expenditures at the same rate in effect for all other administrative costs at the time of the expenditure to the extent that funds are available.

§ 63.2-319. Child welfare and other services.

Each local board shall provide, either directly or through the purchase of services subject to the supervision of the Commissioner and in accordance with regulations adopted by the Board, any or all child welfare services herein described when such services are not available through other agencies serving residents in the locality. For purposes of this section, the term "child welfare services" means public social services that are directed toward:

1. Protecting the welfare of all children including handicapped, homeless, dependent, or neglected children;

2. Preventing or remedying, or assisting in the solution of problems that may result in the neglect, abuse, exploitation or delinquency of children;

3. Preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving these problems and preventing the break up of the family where preventing the removal of a child is desirable and possible;

4. Restoring to their families children who have been removed by providing services to the families and children;

5. Placing children in suitable adoptive homes in cases where restoration to the biological family is not possible or appropriate; and

6. Assuring adequate care of children away from their homes in cases where they cannot be returned home or placed for adoption.

Each local board is also authorized and, as may be provided by regulations of the Board, shall provide rehabilitation and other services to help individuals attain or retain self-care or self-support and such services as are likely to prevent or reduce dependency and, in the case of dependent children, to maintain and strengthen family life.

§ 63.2-320. Accepting and expending certain funds on behalf of children placed by or entrusted to local board when no guardian appointed; disposition of funds when children discharged.

A local board is authorized and empowered to accept and expend on behalf of and for the benefit of any child placed by it where legal custody remains with the parents or guardians, committed or entrusted to its care under §§ 63.2-900 and 63.2-903, when no guardian has been appointed, funds or money paid or tendered as pension, compensation, insurance or other benefit from the Veterans'

Administration or under the Railroad Retirement Act or the old age and survivors' insurance provisions of the Social Security Act, as amended, or funds contributed or paid by parents or other persons for the support of such child, and the local board may, from any such funds received, provide for the current or future maintenance of such child.

Whenever any child is discharged by the local board all such funds held by the local board shall be paid to the child's guardian if such funds exceed $1,000 upon such guardian posting bond as may be required by law, or disbursed in accordance with § 8.01-606, if the sum does not exceed $1,000.

§ 63.2-321. Interest in and cooperation for public assistance and social services; directing local director.

It shall be the duty of each local board to interest itself in all matters pertaining to the public assistance and social services needed by people of the political subdivision or subdivisions served by the local department, to direct the activities of the local director and to cooperate with the juvenile and domestic relations courts and all other agencies operating for the social betterment of the community.

§ 63.2-322. Conducting hearings, issuing subpoenas, etc.

Local boards in the exercise and performance of their functions, duties and powers under the provisions of this title are authorized to hold and conduct hearings, issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents, to administer oaths and to take testimony thereunder.

§ 63.2-323. Emergency payments.

In emergency situations or in the event of delay or error in a state issuance of payments for public assistance and social services to eligible recipients, or expenditures for administration and services, emergency payments shall be issued by local boards as authorized by Board regulations. In emergency situations that result from lost or stolen checks, the Department shall assume liability for losses incurred by local boards due to fraudulent acts by recipients; however, the local board shall make diligent efforts to recoup any such lost funds in accordance with Board regulations.

Article 2.

Local Departments and Local Directors of Social Services.

§ 63.2-324. Local departments of social services.

There shall be a local department of social services for each county or city under the supervision and management of a local director. However, two or more counties, cities, or any combination thereof, whether having separate local boards or a district board, may unite to establish a local department of social services and appoint a local director of social services to administer this title in such counties and cities, in which case such local director shall be the local director for each such county and city and the expenses incident to such local department shall be divided in such manner as the respective governing bodies provide by agreement.

§ 63.2-325. Appointment of local directors of social services and local employees.

Subject to the personnel standards and regulations of the Board, the local director shall be appointed by the local board, or, where the city charter or statutes relating to special forms of city or county government designate some other appointing authority, then by such other appointing authority, from a list of eligibles furnished by the Commissioner. Subject to the personnel standards, and regulations of the Board, the local boards or other appointing authority shall employ, or authorize the local director to employ, such other employees as may be required by the Commissioner to administer this title in the county or city.

§ 63.2-326. Service at pleasure of local board or local director.

The local director and other employees shall serve at the pleasure of the local board, or other appointing authority, subject to the provisions of the merit system plan as defined in § 63.2-100. If other employees are employed by the local director, they shall serve at the pleasure of the local director, within the provisions of the merit system plan.

§ 63.2-327. Removal by Commissioner.

Any local director and any such employee who does not meet the personnel standards established by the Board may be removed by the Commissioner.

§ 63.2-328. Bond.

Before entering upon the discharge of his duties, every local director shall enter bond with surety to be approved by the court or judge, in such sum as the court or judge may fix, conditioned upon the faithful discharge of his duties.

§ 63.2-329. Bond of certain employees of local boards.

Every employee duly authorized to certify payments to be made or authorized to draw warrants on the treasurer or other fiscal officer shall, before entering upon the discharge of his duties, enter into a bond with surety to be approved by the judge of the circuit court of the county or city in such sum as the judge may fix, conditioned upon the faithful discharge of his duties. However, such sum shall be at least fifteen percent of the annual gross expenditures of the agency less nonrecurring items. The

provisions of this section shall not apply in localities when provision for bonding such employees has been made by their governing bodies and the amount of the bonding equals or exceeds the amounts specified in this section.

§ 63.2-330. Compensation.

The local director and other persons employed to administer the provisions of this title in each county or city shall be paid such compensation by such county or city as shall be fixed by the local board or other appointing authority within the compensation plan provided in the merit system plan. With the approval of the Board and the local governing body, the local board may provide that the local director and such other employees shall be paid compensation in excess of the maximums permitted in the compensation plan. Such excess compensation shall be paid wholly from the funds of such county or city and any federal funds that are available and appropriate for such use.

§ 63.2-331. Counties with special forms of government.

In any county having a special form of government under which the governing body of the county would be the appointing authority of the local board, local director, and local employees, the governing body may, subject to the personnel standards and regulations of the Board, authorize the local board to exercise the powers relating to the employment of the local director and other employees required to administer this title in such county and the fixing of their compensation or authorize the local board to exercise such powers insofar as they relate to the local director and the local director to exercise such powers insofar as they relate to other employees required to administer this title in such county.

§ 63.2-332. Powers and duties of local directors.

The local director shall be the administrator of the local department and shall serve as secretary to the local board. Under the supervision of the local board, unless otherwise specifically stated, and in cooperation with other public and private agencies, the local director, in addition to the functions, powers and duties conferred and imposed by other provisions of law, shall have the powers and perform the duties contained in this title.

§ 63.2-333. Agent of Commissioner.

The local director shall act as agent for the Commissioner in implementing the provisions of federal and state law and regulation.

§ 63.2-334. Cooperation with private agencies.

The local director shall foster cooperation between all public and private charitable and social agencies in the county or city to the end that public resources may be conserved and the social services needs of the county or city be adequately met.

§ 63.2-335. Keeping records.

The records of the cases handled and business transacted by the local department shall be kept in such manner and form as may be prescribed by the Board.

§ 63.2-336. Annual report.

At the request of the local governing body, the local director shall each year prepare and keep on file a full report of the local department's work and proceedings during the year. If such request is made, one copy of such report shall be filed with the local governing body and another with the Board.

CHAPTER 4.

FUNDING OF PUBLIC ASSISTANCE AND SOCIAL SERVICES.

§ 63.2-400. Local appropriation.

The governing body of each county and city shall each year appropriate sums of money sufficient to provide for the payment of public assistance and to provide social services, including cost of administration, under the provisions of Subtitles II and III of this title, within such county or city. Such governing bodies may also appropriate sums of money sufficient to provide for the full range of public assistance and social services for children and adults as may be required by federal legislation for reimbursement thereunder. The respective governing bodies of the counties and cities shall also appropriate sums of money as shall be sufficient to provide for the foster care of children in the custody or under the supervision of the local boards.

§ 63.2-401. Reimbursement of localities by the Commonwealth.

Such funds as are received from the United States and agencies thereof as grants-in-aid for the purpose of providing public assistance and social services grants shall be paid monthly by the Commissioner to each county, city or district fiscal officer as reimbursement of the federal share of such grants as have been paid by each county and city under the provisions of Subtitle II and III of this title. Within the limits of the appropriations of state funds, the Commissioner shall reimburse the entire balance of such public assistance and social services grants as have been paid by each city, county or district fiscal officer after crediting them with the reimbursement made from federal funds. Within the limits of the appropriations of state funds, the Commissioner shall reimburse monthly each city, county or district fiscal officer to the extent of sixty-two and one-half percent of such expenditures made in connection with general relief provided under § 63.2-802. Within the limits of the appropriations of state

funds for the purpose, the Commissioner shall reimburse monthly each city, county or district fiscal officer to the extent of eighty percent of expenditures made for auxiliary grants pursuant to § 63.2-800. Within the limits of state funds appropriated for the purpose, the Commissioner shall reimburse to each county, city or district fiscal officer an amount not less than fifty percent or more than sixty-two and one-half percent of such expenditures, not federally reimbursable, made for the care of children placed in family homes or institutions pursuant to §§ 63.2-900 and 63.2-903.

Administrative expenditures made by the localities in connection with the providing of public assistance grants, other benefits and related social services, including child welfare pursuant to § 63.2-319, shall be ascertained by the Board, and the Commissioner shall, within the limits of available federal funds and state appropriations, reimburse monthly each county, city or district fiscal officer therefor out of such federal and state funds in an amount to be determined by the Board not less than fifty percent of such administrative costs.

The Commissioner also shall reimburse monthly, to the extent funds are available for such purpose, each county, city or district fiscal officer out of state and federal funds, to the extent provided in the preceding paragraph, for monthly rental payments for office space provided the local department in publicly owned buildings, for payments that are based on the cost of initial construction or purchase of a building or a reasonable amount for depreciation of such building, and for the cost of repairs and alterations to either a privately or publicly owned building. However, no monthly rental payment shall exceed a reasonable amount as determined by the Commissioner.

Claims for reimbursement shall be presented by the local board to the Commissioner, and shall be itemized and verified in such manner as the Commissioner may require. Such claim shall, upon the approval of the Commissioner, be paid out of funds appropriated by the Commonwealth and funds received from the federal government for the purposes of Subtitles II and III of this title, to the treasurer or other fiscal officer of the county or city. Wherever two or more counties or cities have been combined to form a district pursuant to § 63.2-306, reimbursements by the Commissioner under this section shall be paid to the district fiscal officer or other person designated to receive such funds by the governing bodies of such counties or cities. The Commonwealth shall reimburse each county and city the full amount of public assistance grants provided for Temporary Assistance for Needy Families.

§ 63.2-402. Reimbursement of the Commonwealth by local board.

If any county or city through its appropriate authorities or officers fails or refuses to provide reimbursement of the Commonwealth, the Board shall authorize and direct the Commissioner to file at the end of each month with the State Comptroller and with the local governing body of such county or city a statement showing all disbursements and expenditures, including administrative expenditures, made for and on behalf of such county or city, and the Comptroller shall from time to time as such funds become available deduct from the funds appropriated by the Commonwealth, in excess of requirements of the Constitution of Virginia, for distribution to such county or city amounts required to reimburse the Commonwealth for expenditures incurred under the provisions of this section. All funds so deducted and transferred are hereby appropriated for the purposes set forth, and shall be expended and disbursed as provided in § 63.2-403. Any county or city may provide such other necessary or incidental social or rehabilitative services as may be authorized by the Board in connection therewith.

§ 63.2-403. Expenditures by Department.

A. Appropriations made to the Department by the General Assembly for carrying out the provisions of Subtitles II and III of this title, including funds received from the United States and other sources for such purpose, shall be used for the following purposes:

1. Paying such reasonable portion of the per diem and expenses of the members of the Board, the expenses of the Commissioner, the salaries and remuneration of agents and employees of the Board and of the Commissioner, as shall be chargeable for the administration of Subtitles II and III of this title;

2. Paying all costs and expenses incurred by the Board and the Commissioner in the administration of Subtitles II and III of this title;

3. Reimbursing the counties and cities to the extent provided in § 63.2-401;

4. Paying public assistance to eligible recipients, and expenditures for social services and administration, in the event the Board adopts regulations to provide for state issuance of any or all of such payments;

5. Paying to the United States, for so long as such payment shall be required as a condition for financial participation by the United States in any public assistance or social services program its proportionate share of the net amounts collected by local boards from recipients and estates of recipients; and

6. Paying to the Social Security Administration the cost of administering state supplementation of the Supplemental Security Income program if the Commonwealth agrees to such federal administration.

B. Expenditures and disbursements of all amounts appropriated for the foregoing purposes shall be made by the State Treasurer on warrants of the Comptroller issued with the approval of the

Commissioner.

§ 63.2-404. Expenses of Auditor of Public Accounts, Comptroller and State Treasurer.

All expenses incurred by the Auditor of Public Accounts in auditing the books, records and accounts of the Board and the Commissioner, and in rendering other services to them and all expenses incurred by the Comptroller and the State Treasurer in performing the services required by or under Subtitles II and III of this title, may be treated as administrative expenses of the Department, and paid as such.

§ 63.2-405. Provisions for determination of eligibility for medical care and medical assistance; provision of social services; regulations.

The Commissioner shall, in compliance with the state plan for medical assistance services, applicable regulations of the Board and other state and federal law, provide for the determination of eligibility for medical care and medical assistance and social services required for (i) state participation under Public Law 97 of the 89th Congress of the United States, approved July 30, 1965, as amended, and regulations of the Department of Health and Human Services; and (ii) other state and federal programs. The Commissioner, subject to the state plan for medical assistance services, applicable regulations of the Board and other state and federal law, may establish policies, in the form of guidance documents, necessary to implement such functions, including safeguarding information concerning applicants and recipients.

§ 63.2-406. Authority of Board upon amendments of the Social Security Act or regulations of the Department of Health and Human Services.

In the event the Social Security Act or other statutes or regulations adopted by the Department of Health and Human Services are amended to change requirements to entitle the Commonwealth to federal grants or reimbursement for public assistance payments and expenditures for social services, the Board may by regulation adopt such standards, requirements and procedures that would bring the public assistance and social services programs into compliance with the federal requirements so as not to interfere with, diminish or jeopardize the Commonwealth's entitlement to federal grants or reimbursement for public assistance payments or expenditures for social services.

If federal statutes or regulations are amended to permit funds appropriated by Congress to be used for public assistance to or social services for any persons eligible for assistance under §§ 63.2-319 and 63.2-802, the Board may, pursuant to the provisions of § 63.2-217, make applicable such provisions of Subtitles II and III of this title as the Board finds necessary to enable the Commonwealth to receive reimbursement for such public assistance and social services. The Board may also by regulation define eligibility within the limitations of § 63.2-802 of persons to receive public assistance or social services under any amendments of the Social Security Act or other statutes. It is the purpose of this section to enable the Commonwealth to meet the requirements for federal reimbursement of public assistance or social services to persons who are eligible for public assistance or social services under Subtitles II and III of this title or who may be eligible under amendments of the Social Security Act.

§ 63.2-407. Necessary or incidental public assistance or social services.

With respect to general relief, foster care for children and auxiliary grants for the aged, disabled or blind, any county or city may provide such other necessary or incidental public assistance or social services as may be authorized by the Board.

§ 63.2-408. When a locality fails to provide public assistance or social services; deductions by Comptroller; social services; withholding payments.

If any county or city, through its appropriate authorities or officers fails or refuses to provide public assistance or social services in accordance with the provisions of Subtitles II and III of this title, the Board through appropriate proceedings shall require such authorities and officers to exercise the powers conferred and perform the duties imposed by Subtitles II and III.

For so long as the failure or refusal to provide for the public assistance or social services continues, the Board shall authorize and direct the Commissioner under regulations of the Board to provide for the payment of public assistance or the furnishing of social services in such county or city out of funds appropriated for the purpose of carrying out the provisions of Subtitles II and III of this title. In such event, the Commissioner shall at the end of each month file with the State Comptroller and with the local governing body of such county or city a statement showing all disbursements and expenditures, including administrative expenditures, made for and on behalf of such county or city, and the Comptroller shall from time to time as such funds become available deduct from funds appropriated by the Commonwealth, in excess of requirements of the Constitution of Virginia, for distribution to such county or city amounts required to reimburse the Commonwealth for expenditures incurred under the provisions of this section. All such funds so deducted and transferred are hereby appropriated for the purposes set forth, and shall be expended and disbursed as provided in § 63.2-403. If at any time a locality fails to operate public assistance programs or social service programs in accordance with state laws or regulations or fails to provide the necessary staff for the implementation of such programs, the Board may authorize and direct the Commissioner, under regulations of the Board, to withhold from

such locality the entire reimbursement for administrative expenditures or a part thereof for the period of time the locality fails to comply with state laws or regulations.

§ 63.2-409. No lien to attach to property of applicant or recipient; release of existing unforeclosed liens.

No lien in favor of the Commonwealth or any of its political subdivisions shall be claimed against, levied or attached to the real or personal property of any applicant for or recipient of public assistance or social services as a condition of eligibility therefor or to recover such aid following the death of such applicant or recipient except applicants for or recipients of long-term care nursing facility benefits paid for by the Department of Medical Assistance Services. However, this section shall not bar any action by the Commonwealth or a local department that seeks reimbursement for part or all of the costs incurred by the Commonwealth or local department for care and maintenance provided to an applicant of the Federal Supplemental Security Income program during the application period when such applicant becomes eligible for the program retroactive to the date of application. In addition, this section shall not be construed to bar any action by the Commonwealth or a local department that seeks reimbursement for public assistance paid through the Temporary Assistance for Needy Families or refugee programs while the family attempts to dispose of real property which together with other resources causes its total resources to be in excess of the state's allowable reserve.

§ 63.2-410. State pool of funds under the Comprehensive Services Act.

The General Assembly and the governing body of each county and city shall appropriate such sum or sums of money for use by the community policy and management teams through the state pool of funds established in Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 as shall be sufficient to provide basic foster care services for children who are identified as being at risk, as determined by policy developed by the Board, or who are under the custody and control of the local board. The local governing body of each county and city shall appropriate such sums of money as necessary for the purchase of such other essential social services to children and adults under such conditions as may be prescribed by the Board in accordance with federally reimbursed public assistance and social service programs.

§ 63.2-411. Construction and operation of children's residential facilities.

Subject to approval by the Governor, a local board is authorized and empowered (i) to operate, construct, purchase, renovate or enlarge children's residential facilities for children who are in the custody of such local board by reason of commitment, voluntary entrustment or temporary detention order or (ii) to contract for such services from other counties or cities operating such facilities or from individuals or private corporations whose facilities are licensed by the appropriate state agency. The cost of maintaining children in such facilities through purchase of service contracts shall be established in accordance with regulations of the Board. Any moneys paid by a local board of a county or city to another county or city for services purchased pursuant to this section shall be applied by that county or city to the establishment and operation of such children's residential facilities. Children's residential facilities established pursuant to the provisions of this section shall meet standards prescribed by the Board.

Within the limits of appropriations of state funds, the Department shall reimburse the local board one half the actual cost of the construction, purchase, renovation or enlargement of each such facility. The Commonwealth shall reimburse the local board for administrative costs of operations of such facilities, including the entire reasonable cost of food, medicines, disinfectants, beds and bedding, utilities, equipment and service maintenance, transportation, staff salaries and fringe benefits, insurance and other necessary supplies in accordance with the provisions of § 63.2-401.

In the event that a local board requests and receives financial assistance for the costs of the local share of the construction, purchase, renovation or operation of children's residential facilities for children who are in the custody of such local board from any source other than reimbursement provided pursuant to this section, the total financial assistance and reimbursement shall not exceed the total cost of construction, purchase, renovation or operations, and such funds shall not be considered state funds.

§ 63.2-412. Assistance to needy persons engaged in work or training programs; costs of administration of such programs.

Notwithstanding any other provisions of law, the Commissioner is authorized, subject to the approval of the Board, to initiate and administer a program providing for payments to or in behalf of needy persons engaged in work or training programs. Such payments may be made by transfer of funds to an appropriate agency administering a work or training program. The Commissioner is also authorized to pay all costs incurred in the administration of such programs from funds appropriated for such purposes.

Subtitle II.
Public Assistance.
CHAPTER 5.
GENERAL PROVISIONS.

§ 63.2-500. Definitions.

For purposes of this subtitle, unless the context otherwise clearly requires:

"Agreement" means the written individualized agreement of personal responsibility required by this chapter.

"Case manager" means the worker designated by the local department, a private-sector contractor or a private community-based organization including nonprofit entities, churches, or voluntary organizations that provide case management services.

"Intensive case management" means individualized services provided by a properly trained case manager.

§ 63.2-501. Application for assistance.

Except as provided for in the state plan for medical assistance services pursuant to § 32.1-325, application for public assistance shall be made to the local board and filed with the local director of the county or city in which the applicant resides. The application shall be in writing on forms prescribed by the Commissioner and shall be signed by the applicant under penalty of perjury in accordance with § 63.2-502.

If the condition of the applicant for public assistance precludes his signing an application, the application may be made on his behalf by his guardian or conservator. If no guardian or conservator has been appointed for the applicant, the application may be made by any competent adult person having sufficient knowledge of the applicant's circumstances to provide the necessary information, until such time as a guardian or conservator is appointed by a court.

§ 63.2-502. False application or false swearing; penalty.

Any person who knowingly makes any false application for public assistance or who knowingly swears or affirms falsely to any matter or thing required by the provisions of this title or as to any information required by the Commissioner, incidental to the administration of the provisions of this title, to be sworn to or affirmed, shall be guilty of perjury and, upon conviction therefor, shall be punished in accordance with the provisions of § 18.2-434.

§ 63.2-503. Procedure upon receipt of application.

Upon receipt of the application for public assistance, the local director shall make or cause to be made promptly such investigation as he deems necessary to determine the completeness and correctness of the statements contained in the application and to ascertain the facts supporting the application and such other information as the local board or the Commissioner may require, and shall submit recommendations in writing to the local board.

The Board may by regulation authorize the local directors to provide immediate and temporary assistance to persons pending action of the local boards.

§ 63.2-504. Decision of local board that applicant entitled to public assistance.

Upon completion of the investigation the local board shall determine whether the applicant is eligible for public assistance under this subtitle, and, if eligible, the amount of such public assistance and the date upon which such public assistance shall begin. If the local board approves the payment of public assistance, such public assistance shall thereupon, until changed, modified, or revoked be paid as hereinafter provided. If the local board does not act upon any such application within the period specified by Board regulation, or, if the circumstances require immediate public assistance to prevent hardship, the local director may provide necessary public assistance pending determination by the local board.

§ 63.2-505. Determining the amount of public assistance.

The Board shall adopt regulations governing the amount of public assistance persons receive under the provisions of this subtitle. In making such regulations, the Board shall consider significant differences in living costs in various counties and cities and, unless otherwise precluded by law, shall establish or approve such variations in monetary public assistance standards for shelter allowance on a regional or local basis, as may be appropriate.

The amount of public assistance any person receives under the provisions of this subtitle shall be determined according to Board regulations with regard to (i) the property and income of the person and any support he receives from other sources, including from persons legally responsible for his support, and (ii) the average cost of providing public assistance statewide. It shall be sufficient to provide public assistance that, when added to all other income and support of the recipient (exclusive of that not to be taken into account as hereinafter provided), provides such person with a reasonable subsistence. In determining the income of and support available to a person, the amount of income required to be exempted by federal statute, or if the federal statute makes such exemption permissive, then such portion thereof as may be determined by the Board shall not be considered in determining the amount of assistance any person may receive under this subtitle.

Any amounts received by a person pursuant to a settlement agreement with, or judgment in a lawsuit brought against, a manufacturer or distributor of "Agent Orange" for damages resulting from exposure

to "Agent Orange" shall be disregarded in determining the amount of public assistance such person may receive from state public assistance programs and from federal public assistance programs to the extent permitted by federal law or regulation, and such amounts shall not be subject to a lien or be available for reimbursement to the Commonwealth or any local department for public assistance, notwithstanding the provisions of § 63.2-409.

Any individual or family applying for or receiving public assistance under the Temporary Assistance for Needy Families Program, medical assistance services for low income families with children, food stamp or energy assistance programs, to the extent permitted by federal law and regulation, may have or establish one interest-bearing savings account per assistance unit not to exceed $5,000 at a financial institution for the purpose of paying for tuition, books, and incidental expenses at any elementary, secondary or career and technical school or any college or university or for making a down payment on a primary residence or for business incubation. Any funds deposited in the account, and any interest earned thereon, shall be exempt from consideration in any calculation under any specified public assistance program for so long as the fund and interest remain on deposit in the account. Any amounts withdrawn from the account for the purposes stated in this section shall be exempt from consideration in any calculation under any specified public assistance program. For the purposes of this section, business incubation means the initial establishment of a commercial operation that is owned by a member of the public assistance unit. The net worth of any business owned by a member of the public assistance unit shall be exempt from consideration in any calculation under the public assistance programs specified above so long as the net worth of the business is less than $5,000. The Board shall adopt regulations to establish penalties for amounts withdrawn from any accounts for any other purposes than those stated in this section or other misuse of these funds.

§ 63.2-506. Public assistance not transferable or subject to execution.

Except as provided in § 63.2-512, no public assistance given under this subtitle shall be transferable or assignable, at law or in equity, and none of the money paid or payable as public assistance under this subtitle shall be subject to execution, levy, attachment, garnishment or other legal process, or to the operation of any bankruptcy or insolvency laws.

§ 63.2-507. Personal representatives for recipients of public assistance funds.

A. If any otherwise qualified applicant for, or recipient of, benefits accruing under the provisions of this subtitle is or shall become unable to manage the funds accruing thereunder, or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, or, in the case of Temporary Assistance for Needy Families, the benefits are not being used for the children, a petition may be filed by the local director of the county or city wherein the applicant or recipient resides, in any court of that county or city having jurisdiction in fiduciary matters for the appointment of a personal representative not an employee of the local department, for the purpose of receiving and managing any such payments accruing thereunder for any such recipient or payee. The petition shall allege one or more of the above grounds for the appointment of such representative.

B. The court shall summarily order a hearing on the petition and shall cause the applicant, recipient, or payee to be notified at least five days in advance of the time and place for the hearing. Findings of fact shall be made by the court without a jury. The court may require the local director to furnish a report containing any information necessary and this report shall remain confidential. Reports and findings of fact under this section shall not be competent as evidence in any proceeding dealing with any subject matter other than provided in this section.

C. If the court finds that the applicant, recipient, or payee is unable to manage such payments, or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, or, in the case of Temporary Assistance for Needy Families, the payment is not being used for such child or children, the court may enter an order stating its findings and appointing some responsible person, not an employee of the local department, as personal representative of the applicant, recipient or payee for the purpose set forth herein.

D. The court may in its discretion at the time of the appointment or subsequently require the personal representative to give bond to assure the faithful performance of the duties required. An accounting by the personal representative shall be made at least annually and the court may require additional accounting at such intervals as may be deemed necessary. Failure to render such accounts and to account satisfactorily for all proceeds received shall be sufficient cause for the removal of the personal representative. The personal representative may be removed by the court upon the petition of the local director and another such representative may be appointed. No court costs shall be assessed in proceedings under this section; however, when the accruing benefits exceed $500 per year per applicant or recipient, the clerk of the court shall assess a fee of $5.

§ 63.2-508. Fees for representing applicant or recipient.

No person shall make any charge or receive any fees for representing an applicant for or recipient of public assistance with respect to his application or request for increased assistance prior to a

determination thereon by the local board, whether such fee or charge is paid by the applicant or recipient or any other person.

§ 63.2-509. Public assistance subject to amendment or repeal of laws.

All public assistance granted under this subtitle shall be deemed to be granted and to be held subject to the provisions of this subtitle and any amending or repealing act that may hereafter be passed, and no recipient shall have any claim for compensation, or otherwise, by reason of his public assistance being affected in any way by any amending or repealing act.

§ 63.2-510. Obligation of person to support certain children living in same home; penalty.

A person shall be responsible for the support and maintenance of any child or children living in the same home in which he and the natural or adoptive parent of such child or children cohabit as man and wife and any such person who without cause willfully neglects or refuses or fails to provide for such support and maintenance shall be guilty of a misdemeanor and upon conviction shall be punished in accordance with the provisions of § 20-61.

A pregnancy or the birth of a child during the time a person occupies the status set out above shall not be required as proof of cohabitation.

The obligations imposed herein shall continue so long as such person occupies the status herein described.

§ 63.2-511. Proceedings against persons liable for support.

The local board may proceed in the manner provided by law against any person who is liable for the support of an applicant or recipient of public assistance to require such person, if of sufficient financial ability, to support the applicant or recipient.

§ 63.2-512. Recovery of public assistance erroneously paid.

Any assistance or part thereof erroneously paid to a recipient or former recipient may be recovered by the Board or local board from the recipient or former recipient as a debt. In accordance with Board regulations, the amount erroneously paid may also be recovered from the income, assets or other property of the recipient or former recipient or from the public assistance payable to the recipient.

§ 63.2-513. Notification of change in circumstances.

If at any time during the continuance of public assistance any change occurs, including but not limited to, the possession of any property or the receipt of regular income by the recipient or by any person who is included within a recipient's grant, that, in the circumstances upon which current eligibility or amount of assistance were determined, would materially affect such determination, it shall be the duty of such recipient to notify as defined by regulation the local department of such change, and the local board may either cancel the public assistance, or alter the amount thereof.

Any recipient who knows or reasonably should know that such change in circumstances will materially affect his eligibility for assistance or the amount thereof and willfully fails to comply with the provisions of this section, is guilty of a violation of § 63.2-522.

§ 63.2-514. Reconsideration, cancellation or changes in amount of public assistance.

All public assistance grants shall be reconsidered by the local board as frequently as may be required by Board regulations and at such other times as the local board may deem necessary. After such investigation as the local board deems necessary, or the Board requires, the amount of public assistance may be changed, or public assistance may be entirely withdrawn if the local board finds that the recipient's circumstances have altered sufficiently to warrant such action.

If the local board does not act within thirty days of the receipt of information affecting the amount of assistance or the eligibility therefor as to any recipient, or if the circumstances require immediate action, the local director may make necessary adjustments in the amount of public assistance or suspend further assistance to any such individual pending action by the local board.

§ 63.2-515. Notice to applicant or recipient of decision.

As soon as the local board makes any decision granting, denying, changing or discontinuing any grant of public assistance, it shall give written notice thereof to the applicant or recipient.

§ 63.2-516. Record of decision.

The local board shall preserve for such time as the Commissioner may prescribe, a record of its decision and all supporting documents and records including the findings and recommendations of the local director.

§ 63.2-517. Right of appeal to Commissioner.

Any applicant or recipient aggrieved by any decision of a local board in granting, denying, changing or discontinuing public assistance, may, within thirty days after receiving written notice of such decision, appeal therefrom to the Commissioner.

Any applicant or recipient aggrieved by the failure of the local board to make a decision within a reasonable time may ask for a review of the same by the Commissioner.

The Commissioner may delegate the duty and authority to duly qualified hearing officers to consider and make determinations on any appeal or review by an applicant for or recipient of public assistance

concerning any decision of a local board. The Commissioner shall establish an appeals review panel to review administrative hearing decisions upon the request of either the applicant or the local board. Such panel shall determine if any changes are needed in the conduct of future hearings, or to policy and procedures related to the issue of the administrative appeal, and periodically report its findings to the Commissioner.

Any applicant or recipient aggrieved by any decision of a local board concerning food stamps may appeal to the Commissioner in accordance with federal law and regulation.

§ 63.2-518. Action by Commissioner on appeal.

The Commissioner shall provide an opportunity for a hearing, reasonable notice of which shall be given in writing to the applicant or recipient and to the proper local board in such manner and form as the Commissioner may prescribe. The Commissioner may make or cause to be made an investigation of the facts. The Commissioner shall give fair and impartial consideration to the testimony of witnesses, or other evidence produced at the hearing, reports of investigations of the local board and local director or of investigations made or caused to be made by the Commissioner, or any facts which the Commissioner may deem proper to enable him to decide fairly the appeal or review.

§ 63.2-519. Finality of decision of Commissioner.

The decision of the Commissioner shall be binding and considered a final agency action for purposes of judicial review of such action pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

§ 63.2-520. How public assistance paid.

Public assistance shall be paid to or on behalf of the applicant monthly, or at such other time or times as the regulations of the Board may provide, by the treasurer, the district fiscal officer, or other disbursing officer of the county or city, upon order of the local board or local director, from funds appropriated or made available for such purpose by the local governing body of such county or city. Wherever two or more counties or cities have been combined to form a district pursuant to § 63.2-306, such public assistance payments shall be made by the district fiscal officer.

In the event, however, that the Board adopts regulations to provide for state issuance of public assistance payments, such public assistance shall be paid by the State Treasurer. In emergency situations or in the event of delay or error in a state issuance of public assistance payments, emergency payments may be issued by local boards as authorized by Board regulations.

§ 63.2-521. Change of residence.

Any recipient of Temporary Assistance for Needy Families or medical assistance who moves from one county or city in this Commonwealth to another county or city therein, shall thereafter be treated as if the grant of Temporary Assistance for Needy Families or medical assistance had been made by the county or city into which he moves, and the local board of the county or city from which he moves shall transfer all necessary records relating to the recipient to the local board of the county or city into which such recipient moves.

§ 63.2-522. False statements, representations, impersonations and fraudulent devices; penalty.

Whoever obtains, or attempts to obtain, or aids or abets any person in obtaining, by means of a willful false statement or representation, or by impersonation, or other fraudulent device, public assistance or benefits from other programs designated under regulations of the Board, State Board of Health or the Board of Medical Assistance Services to which he is not entitled or who fails to comply with the provisions of § 63.2-513 is guilty of larceny. It shall be the duty of the local director, the Commissioner of Health or the Director of the Department of Medical Assistance Services to investigate alleged violations and enforce the provisions of this section. A warrant or summons may be issued for each violation of which the local director, the Commissioner of Health or the Director of the Department of Medical Assistance Services has knowledge. The local director, the Commissioner or the Director shall ensure that the attorney for the Commonwealth is notified of any investigation or alleged violation under this section. Trial for violations of this section shall be in the county or city from whose local department assistance was sought or obtained.

In any prosecution under the provisions of this section, it shall be lawful and sufficient in the same indictment or accusation to charge and therein to proceed against the accused for any number of distinct acts of such false statements, representations, impersonations or fraudulent devices that may have been committed by him within six months from the first to the last of the acts charged in the indictment or accusation.

§ 63.2-523. Unauthorized use of food stamps, electronic benefit transfer cards, and energy assistance prohibited; penalties.

Whoever knowingly and with intent to defraud transfers, acquires, alters, traffics in or uses, or aids or abets another person in transferring, acquiring, altering, trafficking in, using, or possessing food stamps, electronic benefit transfer cards or other devices subject to federal reserve system regulations regarding Electronic Fund Transfers, 12 CFR § 205.1 et seq., or benefits from energy assistance

programs, or possesses food coupons, authorization to purchase cards, electronic benefit transfer cards or other devices subject to federal reserve system regulations regarding Electronic Fund Transfers, 12 CFR § 205.1 et seq., or benefits from energy assistance programs in any manner not authorized by law is guilty of larceny.

A violation of this section may be prosecuted either in the county or city where the public assistance was granted or in the county or city where the violation occurred.

§ 63.2-524. Denial of benefits upon finding of fraudulent acts.

Any individual applying for or receiving benefits under the federal Food Stamp program or the Temporary Assistance for Needy Families program may be denied such benefits in accordance with federal law if such person is found by a court or pursuant to an administrative hearing to have intentionally (i) made a false or misleading statement or misrepresented, concealed or withheld facts, or (ii) committed any act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity, for the purpose of establishing or maintaining eligibility for such benefits.

The Board is authorized to adopt regulations governing conduct of administrative hearings and denial of benefits authorized by this section.

§ 63.2-525. Payment by Department for legal services.

Notwithstanding any provision of §§ 2.2-2814, 2.2-2815, 2.2-2816, 2.2-2823, 2.2-2824, 2.2-2825 or § 2.2-2826 to the contrary, whenever there shall be authorized by law an assistant attorney for the Commonwealth and such assistant's duties consist of the prosecution of public assistance fraud cases pursuant to §§ 18.2-95, 18.2-96, 63.2-502, 63.2-513, 63.2-522, 63.2-523 or § 63.2-524, the Department may, with the consent of the attorney for the Commonwealth of the jurisdiction, contract with the county or city or combination thereof for whom such assistant attorney for the Commonwealth is authorized regarding the duties of such assistant and regarding the payment by the Department of the entire salary, expenses, including secretarial services, and allowances of such assistant, as shall be approved by the Compensation Board, for the entire time devoted to these duties. Any such contract may provide that the county, city, or combination thereof shall pay the entire amount of such salary, expenses, and allowances and that the Department shall reimburse such county or city therefor. The amount of such salary, expenses, and allowances shall be set by the Compensation Board as provided by law.

§ 63.2-526. Statewide fraud control program.

A. The Department shall establish a statewide fraud control program to ensure that fraud prevention and investigation are pursued throughout the Commonwealth. The Board shall adopt regulations to implement the provisions of this section.

B. Each local department shall establish fraud prevention and investigation units only insofar as money is appropriated therefor, which shall be staffed with sufficient qualified personnel to fulfill the regulations adopted by the Board. Solely for the purposes of obtaining motor vehicle licensing and registration information from entities within and without the Commonwealth, each local department fraud prevention and investigation unit shall be deemed to be a criminal justice agency as defined in § 9.1-101. The local departments may contract with other local departments to share a fraud prevention and investigation unit and may contract with private entities to perform fraud investigation. Any private entity performing fraud investigations shall comply with the requirements of § 30-138 and shall not be deemed to be a criminal justice agency.

C. The duties of fraud units may include but shall not be limited to (i) developing methods to prevent the fraudulent receipt of public assistance administered by the local board and (ii) investigating whether persons who receive public assistance through the local board are receiving it fraudulently. The fraud unit shall provide whatever assistance is necessary to attorneys for the Commonwealth in prosecuting cases involving fraud.

D. There is hereby created in the state treasury a special nonreverting fund to be known as the Fraud Recovery Special Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All overpayment moneys collected or recovered by local departments related to food stamp, Temporary Assistance for Needy Families, and other federal benefit programs administered by the Department net of any refunds due the federal government shall be paid into the state treasury and credited to the Fund, except as prohibited by federal law or regulation. Any moneys remaining in the Fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purpose of funding state and local fraud control programs.

Funding for local and state fraud control activities shall be comprised of (i) general funds appropriated for this activity, (ii) any federal funds available for this purpose, and (iii) balances in the Fund.

E. Local departments shall apply to the Commissioner for reimbursement from the Fund for the local share of direct costs. The Commissioner shall authorize reimbursements to the local departments from the Fund as provided in the general appropriation act. To receive or continue receiving reimbursements

from the Fund, the local departments shall administer their fraud and investigation units in compliance with Board regulations. The number of local fraud workers for which the state will provide reimbursement in each locality shall be determined by Board regulations.

CHAPTER 6.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM.

§ 63.2-600. Temporary Assistance for Needy Families (TANF); purpose; administration.

There is hereby created the Temporary Assistance for Needy Families Program, hereinafter referred to as TANF or the "Program." The Program shall be administered by the Department in compliance with Titles IV-A and IV-F of the Social Security Act and related federal regulations (excluding 45 C.F.R. Parts 255 and 256), as such laws and regulations were in effect at the time of the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193 on August 22, 1996, to the extent that such laws and regulations do not conflict with (i) those sections of P.L. 104-193 which are mandatory; (ii) waivers granted by the Department of Health and Human Services to Virginia in effect as of January 1, 1997; (iii) state laws and regulations; (iv) the State Plan For Title IV-A of the Social Security Act: Financial Assistance Aid to Families with Dependent Children in effect as of September 30, 1996; or (v) the Title IV-F of the Social Security Act Job Opportunities and Basic Skills Training Program State Plan in effect as of September 30, 1996. Further, in any instance where a state law or regulation enacted pursuant to a waiver conflicts with the terms of P.L. 104-193 or the Title IV-A or IV-F State Plans, such state law or regulation shall control.

§ 63.2-601. Virginia Temporary Assistance for Needy Families Program; goals.

The goals of the Temporary Assistance for Needy Families Program are to:

1. Offer Virginians living in poverty the opportunity to achieve economic independence by removing barriers and disincentives to work and providing positive incentives to work;

2. Provide families living in poverty with the opportunities and work skills necessary for self-sufficiency;

3. Allow families living in poverty to contribute materially to their own self-sufficiency;

4. Set out the responsibilities of and expectations for recipients of public assistance and the government; and

5. Provide families living in poverty with the opportunity to obtain work experience through the Virginia Initiative for Employment Not Welfare (VIEW).

None of the provisions of this chapter shall be construed or interpreted to create any rights, causes of action, administrative claims or exemptions to the provisions of the Program, except as specifically provided in §§ 63.2-609, 63.2-613 and 63.2-618.

The Department of Business Assistance and the Virginia Employment Commission shall assist the Department in the administration of the Program.

§ 63.2-602. Eligibility for Temporary Assistance for Needy Families (TANF); penalty.

A. A person shall be eligible for Temporary Assistance for Needy Families if that person:

1. Has not attained the age of eighteen years, or, if regularly attending a secondary school or in the equivalent level of career and technical education, has not attained the age of nineteen years and is reasonably expected to complete his senior year of school prior to attaining age nineteen;

2. Is a resident of Virginia;

3. Is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece in a residence maintained by such relative or is in placement under conditions specified by the Board;

4. Is in need of public assistance; and

5. If under the age of eighteen years, is in compliance with compulsory school attendance laws (§ 22.1-254 et seq.) as described in § 63.2-606. Prior to imposing a sanction of benefits, the local department shall make reasonable efforts to discuss with the parent or caretaker, by personal contact that may include direct telephone contact, a plan to return the child to school. If such efforts fail, the local department shall mail a written advance notice of proposed action to the parent or caretaker advising that benefits may be reduced if the parent or caretaker fails to contact the local department to develop a plan to return the child to school.

B. An applicant for TANF shall:

1. Furnish, apply for or have an application made on his behalf, and on behalf of all children for whom assistance is being requested, for a social security account number to be used in the administration of the program;

2. Assign the Commonwealth any rights to support from any other person such applicant may have on his own behalf or on behalf of any other family member for whom the applicant is applying for or receiving aid and that have accrued at the time such assignment is executed;

3. Identify the parents of the child for whom aid is claimed, subject to the "good cause" provisions or exceptions in federal law or regulations. However, this requirement shall not apply if the child is in

a foster care placement or if the local department determines, based upon the sworn statement of the applicant or recipient or of another person with knowledge of the circumstances, that the child was conceived as the result of incest or rape; and

4. Cooperate in (i) locating the parent of the child with respect to whom TANF is claimed, (ii) establishing the paternity of a child born out of wedlock with respect to whom TANF is claimed, (iii) obtaining support payments for such applicant or recipient and for a child with respect to whom TANF is claimed, and (iv) obtaining any other payments or property due such applicant or recipient for such child.

Any applicant or recipient who intentionally misidentifies another person as a parent shall be guilty of a Class 5 felony.

C. Unless an exception to the requirement set forth in subdivision B 3 applies, the Department's Division of Child Support Enforcement shall proceed to determine parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20. If paternity is not established after six months of receipt of TANF, the case shall be reviewed to determine the reason that paternity has not been established. If paternity has not been established due to the caretaker relative's noncooperation, the local department may suspend the entire grant or the adult portion of the grant, subject to Board regulations.

D. TANF shall be provided to two-parent families on the same terms and conditions that TANF is provided to single-parent families.

§ 63.2-603. Eligibility for TANF; childhood immunizations.

An applicant for TANF shall provide verification that all eligible children not enrolled in school, a licensed family day home, or a licensed child day center, have received immunizations in accordance with § 32.1-46. However, if an eligible child has not received immunizations in accordance with § 32.1-46, verification shall be provided at the next scheduled redetermination of eligibility for TANF after initial eligibility is granted that the child has received at least one dose of each of the immunizations required by § 32.1-46 as appropriate for the child's age and that the child's physician or the local health department has developed a plan for completing the immunizations. Verification of compliance with the plan for completing the immunizations shall be presented at subsequent redeterminations of eligibility for TANF.

If necessary, the local department shall provide assistance to the TANF recipient in obtaining verification from immunization providers. No sanction may be imposed until the reason for the failure to comply with the immunization requirement has been identified and any barriers to accessing immunizations have been removed.

Failure by the recipient to provide the required verification of immunizations shall result in a reduction in the amount of monthly assistance received from the TANF program until the required verification is provided. The reduction shall be fifty dollars for the first child and twenty-five dollars for each additional child for whom verification is not provided.

Any person who becomes ineligible for TANF payments as a result of this provision shall nonetheless be considered a TANF recipient for all other purposes.

§ 63.2-604. Eligibility for TANF; children born to TANF recipients.

Notwithstanding the provisions of § 63.2-602 and the TANF program regulations, the Board shall revise the schedule of TANF financial assistance to be paid to a family by eliminating the increment in TANF benefits to which a family would otherwise be eligible as a result of the birth of a child during the period of TANF eligibility or during the period in which the family or adult recipient is ineligible for TANF benefits pursuant to a penalty imposed by the Commissioner for failure to comply with benefit eligibility or child support requirements, subsequent to which the family or adult recipient is again eligible for benefits. The Board shall provide that a recipient family in which the mother gives birth to an additional child during the period of the mother's eligibility for TANF financial assistance, or during a temporary penalty period of ineligibility for financial assistance, may receive additional financial assistance only in the case of a general increase in the amount of TANF financial assistance that is provided to all TANF recipients. Applicants shall receive notice of the provisions of this section at the time of application for TANF. This section shall not apply to legal guardians, grandparents, or other persons in loco parentis who are not the biological or adoptive parents of the child.

There shall be no elimination of the increment in benefits for children born within ten months after the mother begins to receive TANF.

A single custodial parent who does not receive additional TANF financial assistance for the birth of a child pursuant to this section shall receive the total value of all child support payments due and collected for such child, and the value of such payments shall not be counted as income for the purposes of TANF eligibility and grant determination.

§ 63.2-605. Eligibility for TANF; parolees and probationers who fail drug tests.

Upon receipt of notification from a probation or parole officer that a TANF caretaker under his supervision has failed a drug test, the local department shall provide future TANF cash benefits to such

caretaker's assistance unit as protective or vendor payments to a third party payee for the benefit of the assistance unit. After twelve months, the local department may reinstate such caretaker as the payee for the assistance unit provided such caretaker has failed no subsequent drug test within such twelve-month period. Any caretaker who is reported to have failed a drug test under this section may appeal such report, including the validity of any test results, pursuant to §§ 63.2-517, 63.2-518 and 63.2-519.

§ 63.2-606. Eligibility for TANF; school attendance.

In order to be eligible for TANF, members of the assistance unit, including minor custodial parents, shall be in compliance with compulsory school attendance laws (§ 22.1-254 et seq.). The Board shall adopt regulations to implement the provisions of this section, including procedures for local departments to (i) receive notification from local school divisions of students who are truant and (ii) assist families in noncompliance to achieve compliance. An applicant for or recipient of TANF or any member of his assistance unit who has been found guilty under § 22.1-263 shall not be eligible for TANF financial assistance until in compliance with compulsory school attendance laws. Any person who becomes ineligible for TANF financial assistance as a result of this section shall nonetheless be considered a TANF recipient for all other purposes.

§ 63.2-607. Eligibility for TANF; minor parent residency.

A. Except as provided in subsection B, an unemancipated minor custodial parent may receive TANF for himself and his child only if the individual and his child reside in the home maintained by his parent or person standing in loco parentis. For purposes of TANF eligibility determination, a minor who receives government-provided public assistance is not considered emancipated unless married.

B. The provisions of subsection A shall not apply if:

1. The individual has no parent or person standing in loco parentis who is living or whose whereabouts are known;

2. The local department determines that the physical or emotional health or safety of the individual or his dependent child would be jeopardized if the individual and dependent child lived in the same residence with the individual's parent or the person standing in loco parentis for the individual; or

3. The local department otherwise determines, in accordance with Board regulations, that there is good cause for waiving the requirements of subsection A.

C. If the individual and his dependent child are not required to live with the individual's parent or the person standing in loco parentis for the individual, the local department shall assist the individual in locating an appropriate adult supervised supportive living arrangement taking into consideration the needs and concerns of the minor and thereafter shall require that the individual and his child reside in such living arrangement or an alternative appropriate arrangement as a condition of the continued receipt of TANF. If the local department is unable, after making diligent efforts, to locate any such appropriate living arrangement, it shall provide case management and other social services consistent with the best interests of the individual and child who live independently.

§ 63.2-608. Virginia Initiative for Employment Not Welfare (VIEW).

A. The Department shall establish and administer the Virginia Initiative for Employment Not Welfare (VIEW) to reduce long-term dependence on welfare, to emphasize personal responsibility and to enhance opportunities for personal initiative and self-sufficiency by promoting the value of work. The Department shall endeavor to develop placements for VIEW participants that will enable participants to develop job skills that are likely to result in independent employment and that take into consideration the proficiency, experience, skills and prior training of a participant.

VIEW shall recognize clearly defined responsibilities and obligations on the part of public assistance recipients and shall include a written agreement of personal responsibility requiring parents to participate in work activities while receiving TANF, earned-income disregards to reduce disincentives to work, and a limit on TANF financial assistance.

VIEW shall require all able-bodied recipients of TANF who do not meet an exemption and who are not employed within ninety days of receipt of TANF benefits to participate in a work activity. VIEW shall require eligible TANF recipients to participate in unsubsidized, partially subsidized or fully subsidized employment and enter into an agreement of personal responsibility. If recipients cannot be placed in an unsubsidized or subsidized job, they shall be required to participate in a six-month community work experience placement. Upon completion of the initial six-month work requirement, participants may receive education and training in conjunction with continued work experience to make them more employable.

B. To the maximum extent permitted by federal law, and notwithstanding other provisions of Virginia law, the Department and local departments may, through applicable procurement laws and regulations, engage the services of public and private organizations to operate VIEW and to provide services incident to such operation.

C. All VIEW participants shall be under the direction and supervision of a case manager.

D. The Department shall ensure that participants are assigned to one of the following employment

categories in priority order not less than ninety days after TANF eligibility determination:

1. Unsubsidized private-sector employment;

2. Subsidized employment, as follows:

a. The Department shall conduct a program in accordance with this section and any applicable federal waivers that shall be known as the Full Employment Program (FEP). FEP replaces TANF and food stamp benefits with subsidized employment. Persons not able to find unsubsidized employment who are otherwise eligible for both TANF and food stamp benefits shall participate in FEP unless exempted by this chapter. FEP shall assign participants to and subsidize wage-paying private-sector jobs designed to increase the participants' self-sufficiency and improve their competitive position in the workforce.

b. The Department shall administer a wage fund that shall be used exclusively to meet the necessary expenditures of FEP. Funds to operate FEP, drawn from funds appropriated for expenditure by or apportioned to Virginia for operation of the TANF and food stamp programs, shall be deposited in this pool. All payments by the Department to participating employers for FEP participants shall be made from the pool.

c. Participants in FEP shall be placed in full-time employment when appropriate and shall be paid by the employer at an hourly rate not less than the federal or state minimum wage, whichever is higher. For each participant hour worked, the Department shall reimburse the employer the amount of the federal or state minimum wage and costs up to the available amount of the participant's combined value of TANF and food stamps. At no point shall a participant's spendable income received from wages and tax credits be less than the value of TANF and food stamps received prior to the work placement.

d. Every employer subject to the Virginia unemployment insurance tax shall be eligible for assignment of FEP participants, but no employer shall be required to utilize such participants. Employers shall ensure that jobs made available to FEP participants are in conformity with § 3304 (a) (5) of the Federal Unemployment Tax Act. FEP participants cannot be used to displace regular workers.

e. FEP employers shall:

(i) Endeavor to make FEP placements positive learning and training experiences;

(ii) Provide on-the-job training to the degree necessary for the participants to perform their duties;

(iii) Pay wages to participants at the same rate that they are paid to other employees performing the same type of work and having similar experience and employment tenure;

(iv) Provide sick leave, holiday and vacation benefits to participants to the same extent and on the same basis that they are provided to other employees performing the same type of work and having similar employment experience and tenure;

(v) Maintain health, safety and working conditions at or above levels generally acceptable in the industry and no less than those in which other employees perform the same type of work;

(vi) Provide workers' compensation coverage for participants;

(vii) Encourage volunteer mentors from among their other employees to assist participants in becoming oriented to work and the workplace; and

(viii) Sign an agreement with the local department outlining the employer requirements to participate in FEP. All agreements shall include notice of the employer's obligation to repay FEP reimbursements in the event the employer violates FEP rules.

f. As a condition of FEP participation, employers shall be prohibited from discriminating against any person, including program participants, on the basis of race, color, sex, national origin, religion, age, or disability;

3. Part-time or temporary employment; or

4. Community work experience, as follows:

a. The Department and local departments shall work with other state, regional and local agencies and governments in developing job placements that serve a useful public purpose as provided in § 482 (f) of the Social Security Act, as amended. Placements shall be selected to provide skills and serve a public function. VIEW participants shall not displace regular workers.

b. The number of hours per week for participants shall be determined by combining the total dollar amount of TANF and food stamps and dividing by the minimum wage with a maximum of a work week of thirty-two hours, of which up to eight hours of employment-related education and training may substitute for work experience employment.

E. Notwithstanding the provisions of subsections A and D, if a local department determines that a VIEW participant is in need of job skills and would benefit from immediate job skills training, it may, with the participant's consent, exempt the participant from job search requirements and place the participant in a career and technical education program targeted to skills required for particular employment opportunities in the locality if the participant meets two or more of the criteria specified in this subsection. Eligible participants include those with problems related to obtaining and retaining employment, such as participants (i) with less than a high school education, (ii) whose reading or math skills are at or below the eighth grade level, (iii) who have not retained a job for a period of at least

six months during the prior two years, or (iv) who are in a treatment program for a substance abuse problem or are receiving services through a family violence treatment program. The career and technical education program shall be for a minimum of thirty hours per week. Prior to placing the VIEW participant in the career and technical program, the local department shall have a memorandum of understanding with an employer that such participant will be placed, if qualified and the employer has an opening, in a job with the employer at the conclusion of the program. The VIEW participant shall be required to work an average of eight hours per week during the vocational educational program in part-time or temporary employment or community work experience. The VIEW participant may continue in the career and technical education program for as long as the local department determines he is progressing satisfactorily and to the extent permitted by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), as amended.

F. Notwithstanding the provisions of subsections A and D, persons eligible to participate in TANF shall also be eligible to participate in approved projects established through the Economic and Employment Improvement Program for Disadvantaged Persons of Chapter 7 (§ 63.2-700 et seq.) of this title.

G. Participants may be reevaluated after a period determined by the local department and reassigned to another work component. In addition, the number of hours worked may be reduced by the local department so that a participant may complete additional training or education to further his employability.

H. Local departments shall be authorized to sanction participants up to the full amount of the TANF grant and food stamps allotment for noncompliance.

I. VIEW participants shall not be assigned to projects that require that they travel unreasonable distances from their homes or remain away from their homes overnight without their consent.

Any injury to a VIEW participant by accident arising out of and in the course of community work experience shall be covered by the participant's existing Medicaid coverage. If a community work experience participant is unable to work due to such an accident, his status shall be reviewed to determine whether he is eligible for an exemption from the limitation on TANF financial assistance.

A community work experience participant who becomes incapacitated for thirty days or more shall be eligible for TANF financial assistance for the duration of the incapacity, if otherwise eligible.

The Board shall adopt regulations providing for the accrual of paid sick leave or other equivalent mechanism for community work experience participants.

§ 63.2-609. VIEW exemptions.

The following TANF recipients shall be exempt from mandatory participation in VIEW and shall remain eligible for TANF financial assistance:

1. Any individual, including all minor caretakers, under sixteen years of age;

2. Any individual at least sixteen, but no more than nineteen years of age, who is enrolled full-time in elementary or secondary school, including career and technical education programs. The career and technical education program must be equivalent to secondary school. Once the individual loses this exemption, he cannot requalify for the exemption, even if he returns to school, unless the case is closed and reopened or he becomes exempt for another reason. Whenever feasible, such recipients should participate in summer work;

3. Any individual who is unable to participate because of a temporary medical condition that is preventing entry into employment or training, as determined by a physician and certified by a written medical statement. Such an exemption shall be reevaluated every sixty days to determine whether the person is still exempt;

4. Any individual who is incapacitated, as determined by receipt of Social Security Disability Benefits or Supplemental Security Income. This exemption shall not be granted to either parent in a TANF-UP case; eligibility shall be evaluated for regular TANF cases on the basis of the parent's incapacity;

5. Any individual sixty years of age or older;

6. Any individual who is the sole caregiver of another member of the household who is incapacitated as determined by receipt of Social Security Disability Benefits or Supplemental Security Income or another condition as determined by the Board and whose presence is essential for the care of the other member on a substantially continuous basis;

7. A parent or caretaker-relative of a child under eighteen months of age who personally provides care for the child. A parent of a child not considered part of the TANF public assistance unit under § 63.2-604 may be granted a temporary exemption of not more than six weeks after the birth of such child;

8. A female who is in her fourth through ninth month of pregnancy as determined by a written medical statement provided by a physician;

9. Children receiving Title IV-E-Foster Care;

10. Families where the primary caretakers of a child or children are legal guardians, grandparents,

or other persons standing in loco parentis and are not the adoptive or biological parents of the child.

In a TANF-UP case, both parents shall be referred for participation unless one meets an exemption; only one parent can be exempt. If both parents meet an exemption criterion, they shall decide who will be referred for participation.

§ 63.2-610. Participation in VIEW; coordinated services.

A. In administering VIEW, the Department shall ensure that local departments provide delivery and coordination of all services through intensive case management. VIEW participants shall be referred to a case manager. The case manager shall fully explain VIEW to the participant and shall provide the participant with written materials explaining VIEW.

B. The Department shall assist local departments in improving the delivery of services, including intensive case management, through the utilization of public, private and nonprofit organizations, to the extent permissible under federal law.

C. The Department shall be responsible for the coordination of the intensive case management. Job finding and job matching leading to independent employment shall be facilitated by the Virginia Employment Commission and the Department of Business Assistance.

D. The Secretary of Health and Human Resources, assisted by the Secretary of Commerce and Trade, shall prepare and maintain an annual plan for coordinating and integrating all appropriate services in order to promote successful outcomes. The plan shall encourage the use of local and regional service providers and permit a variety of methods of providing services. Emphasis shall be placed on coordinating and integrating career counseling, job development, job training and skills, job placement, and academic and technical education. Public and private institutions of higher education and other agencies which offer similar or related services shall be invited to participate as fully as possible in developing, implementing and updating the annual coordination plan.

E. The Secretary of Health and Human Resources shall:

1. Increase public awareness of the federal earned income credit and encourage families who may be eligible to apply for this tax credit;

2. Pursue aggressive child-support initiatives as established by the General Assembly;

3. Work with community providers to develop adoption, education, family planning, marriage, parenting, and training options for Program participants;

4. Increase public awareness of the tax advantages of relocating one's residence in order to secure employment;

5. Provide leadership for the development of community work experience opportunities in VIEW;

6. Develop strategies to educate, assist and stimulate employers to hire participants and to provide community work experience opportunities, in consultation with representatives of employers and relevant public and private agencies on the state and local level; and

7. Provide technical assistance to local departments to assist them in working with employers in the community to develop job and community work experience opportunities for participants.

§ 63.2-611. Case management; support services; transitional support services.

A. The Commissioner, through the local departments, with such funds as appropriated, shall offer families participating in VIEW-intensive case management services throughout the family's participation in VIEW. Case management services shall include initial assessment of the full range of services that will be needed by each family including testing and evaluation, development of the individualized agreement of personal responsibility, and periodic reassessment of service needs and the agreement of personal responsibility. It shall be the goal of the Department to have a statewide intensive case management ratio not higher than the statewide average ratio in Title IV-F of the Social Security Act Job Opportunities and Basic Skills Training Program State Plan as the ratio existed on July 1, 1995. The Department shall include in its annual report to the Governor and General Assembly an evaluation of program effectiveness statewide and by locality, including an evaluation of case management services.

B. Local departments are authorized to provide services to VIEW families throughout the family's participation in VIEW subject to regulations adopted by the Board, including:

1. Child care for the children of participants if:

a. The participant is employed and child-care services are essential to the continued employment of the participant;

b. Child-care services are required to enable a participant to receive job placement, job training or education services; or

c. The participant is otherwise eligible for child care pursuant to Board regulations.

2. Transportation that will enable parental employment or participation in services required by the agreement of personal responsibility.

3. Job counseling, education and training, and job search assistance consistent with the purposes of VIEW.

4. Medical assistance.

C. A participant whose TANF financial assistance is terminated, either voluntarily or involuntarily, shall receive the following services for up to twelve months after termination, if needed:

1. Assistance with child care if such assistance enables the individual to work;

2. Assistance with transportation, if such transportation enables the individual to work; and

3. Medical assistance, including transitional medical assistance for families with a working parent who becomes ineligible for TANF financial assistance because of increased earnings, unless (i) medical insurance is available through the parent's employer or (ii) family income exceeds 185 percent of the federal poverty level.

D. The Department or local departments may purchase or otherwise acquire motor vehicles from the centralized fleet of motor vehicles controlled by the Commonwealth Transportation Commissioner under Article 7 (§ 2.2-1173 et seq.) of Chapter 11 of Title 2.2 and sell or otherwise transfer such vehicles to TANF recipients or former recipients. Purchases, sales, and other transfers of vehicles under this subsection shall not be subject to the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), or the provisions of §§ 2.2-1124, 2.2-1153, 2.2-1156, and 2.2-1177 relating to the sale, purchase, and transfer of surplus motor vehicles and other surplus state property.

E. Nothing in this section shall be construed or interpreted to create a cause of action or administrative claim based upon a right or entitlement to any specific services or an exemption or waiver from any provision of VIEW.

§ 63.2-612. Time limit on the receipt of TANF.

Unless otherwise exempt, VIEW participants and their families may receive TANF financial assistance for a maximum of twenty-four months only, subject to § 63.2-613. VIEW participants and their families may receive TANF financial assistance, if otherwise eligible, after a subsequent period of twenty-four months without (i) participation in VIEW, (ii) the receipt of TANF financial assistance, or (iii) the receipt of transitional assistance.

The local department shall notify a VIEW participant and his family that his TANF financial assistance is scheduled to be terminated as provided in this section. Notice shall be given sixty days prior to such termination and shall inform the VIEW participant and his family of the exception regulations adopted by the Board and the procedure to be followed by the VIEW participant and his family if he believes that he is entitled to an extension of benefits.

§ 63.2-613. Hardship exceptions.

The Board shall adopt regulations providing exceptions to the time limitations of this chapter in cases of hardship. In adopting regulations, the Board shall address circumstances:

1. Where a VIEW participant has been actively seeking employment by engaging in job-seeking activities required pursuant to § 60.2-612 and is unable to find employment;

2. Where factors relating to job availability may be unfavorable;

3. Where the VIEW participant loses his job as a result of factors not related to his job performance; and

4. Where extension of benefits for up to one year will enable a participant to complete employment-related education or training.

§ 63.2-614. Financial eligibility.

A. Pursuant to regulations adopted by the Board, the parent of an eligible child or children who is married to a person not the parent of the child or children shall not be eligible for TANF if the parent's spouse's income, when deemed available to the family unit according to federal regulations, in and of itself, exceeds the state eligibility standard for such aid. However, eligibility for the child or children shall be considered by counting the income of such parent and child or children, and any portion of the parent's spouse's income that exceeds 150 percent of the federal poverty level for the spouse and parent. If the income of the parent's spouse that is deemed available does not, in and of itself, exceed the state eligibility standard for TANF, none of the spouse's income shall be counted as available to the family unit, and eligibility shall be determined considering only the income, if any, of the parent and the child or children. If the parent fails or refuses to cooperate with the Department's Division of Child Support Enforcement in the pursuit of child support, the income of the parent's current spouse shall be counted in accordance with Title IV-A federal regulations at 45 C.F.R. 233.20(a)(3)(xiv) in determining eligibility for TANF for the parent's child or children.

B. Program participants shall be eligible for the income disregards and resource exclusions in § 63.2-505.

C. VIEW participants and their families shall also be eligible for the following income disregards and resource exclusions:

1. To reward work, a VIEW participant and his family who have earned income from any source other than VIEW, may continue to receive TANF financial assistance for up to two years from the date that both parties initially sign the agreement. However, in no event shall the TANF payment when added to the earned income exceed such percentage of the federal poverty level established by the

Commissioner, and if necessary any TANF payment shall be reduced so that earned income plus the TANF payment equals such percentage of the federal poverty level established by the Commissioner.

2. The fair market value, not to exceed $7,500, of one operable motor vehicle per family.

§ 63.2-615. Payment of tuition and other expenses of public assistance recipients enrolled in skill development training programs.

The Board may authorize the payment of tuition fees, transportation costs or other necessary or incidental expenses for obtaining skill development training or retraining for qualified public assistance recipients. The Board may, by regulation, prescribe necessary requisites and conditions under which such payments may be made. Such assistance shall be in addition to any other public assistance for which such recipient may be eligible and shall not affect his entitlement thereto.

§ 63.2-616. Provision of public assistance and social services.

Local departments may combine community resources to assist the families of persons who may be in need because of the limitations on TANF financial assistance and may arrange for appropriate care of needy families where the limitation on TANF financial assistance as a result of the birth of an additional child or the two-year limit on TANF financial assistance is executed. Public assistance and social services may be provided that include, but are not limited to, help for families in obtaining donated food and clothing, continuation of food stamps for adults and children who are otherwise eligible, child care, and Medicaid coverage for adults and children who are otherwise eligible for Medicaid.

§ 63.2-617. Diversionary cash assistance.

The Board shall adopt regulations to enable TANF-eligible applicants meeting certain criteria to receive at one time the maximum TANF cash assistance that the applicant would otherwise receive for a period up to 120 days. An individual may receive diversionary TANF cash assistance only one time in a sixty-month period and, in so doing, waives his eligibility for TANF for a period of up to 160 days. Diversionary assistance shall be used to divert the family from receiving ongoing TANF cash assistance by providing assistance for one-time emergencies.

§ 63.2-618. Notice and appeal.

A participant aggrieved by the decision of a local board granting, denying, changing or discontinuing public assistance may appeal such decision pursuant to § 63.2-517. If a hearing request is received prior to the effective date of any proposed change in benefit status, a participant appealing such change shall have the right to continued direct payment of TANF benefits pending final administrative action on such appeal.

§ 63.2-619. Evaluation and reporting.

A. In administering the Program, the Commissioner shall develop and use evaluation methods that measure achievement of the goals specified in § 63.2-601.

B. The Commissioner shall file an annual report with the Governor and General Assembly regarding the achievement of such goals.

The annual report shall include a full assessment of the Program, including its effectiveness and funding status, statewide and for each locality; and a comparison of the results of the previous annual reports. The Department shall publish the outcome criteria to be included in the annual report.

§ 63.2-620. Child care services for TANF and low-income families.

The Department shall identify strategies for Virginia to obtain the maximum amount of federal funds available for child care services for TANF recipients and families whose incomes are at or below 185 percent of the federal poverty level. The Department shall provide an annual report on these strategies to the chairmen of the House Committees on Appropriations and Health, Welfare and Institutions and Senate Committees on Finance and Rehabilitation and Social Services by December 15.

CHAPTER 7.

ECONOMIC EMPLOYMENT IMPROVEMENT PROGRAM FOR DISADVANTAGED PERSONS.

§ 63.2-700. Economic and Employment Improvement Program established.

A. With such funds as may be appropriated for this purpose and from such gifts, donations, grants, bequests, and other funds as may be received on its behalf by the Department, the Department shall administer the Economic and Employment Improvement Program for Disadvantaged Persons, hereinafter the "Economic and Employment Improvement Program," to facilitate the continuation of existing projects funded pursuant to the provisions of this chapter, to improve the employability of and provide assistance to disadvantaged persons through education and skills training, and to extend the eligibility for education and job training services.

B. The Economic and Employment Improvement Program shall comply with state and federal laws and regulations governing workforce training, welfare reform, adult literacy and education, and career and technical education programs and shall be consistent with existing state apprenticeship programs.

§ 63.2-701. Economic and Employment Improvement Program awards administered by Department; establishment of policies.

The Department shall establish policies for the implementation of the Economic and Employment Improvement Program. Such policies shall provide for (i) the continuation and enforcement of regulations in effect on July 1, 1999, under which eligible projects were approved for grant awards by the Governor's Employment and Training Department; (ii) the designation of projects to receive grant awards in accordance with the recommendations of the Grant Awards Committee, pursuant to § 63.2-702; and (iii) additional provisions establishing eligibility criteria for projects designed to serve certain hard-to-employ persons as provided in clauses (iv) through (vii) of subsection C of § 63.2-702.

§ 63.2-702. Grant Awards Committee reestablished; eligible projects; criteria for award of grants.

A. There is hereby reestablished the Economic and Employment Improvement Program for Disadvantaged Persons Grant Awards Committee, which shall be composed of nine members designated by the relevant agency heads as follows: (i) one representative of the State Board for Community Colleges who shall have expertise in grant writing and review; (ii) one representative of the Department of Education, who shall have expertise in the administration and delivery of career and technical education programs and services administered by and through the public schools, and the delivery of adult literacy and education services; (iii) one representative of the Virginia Employment Commission, who shall have expertise in the administration and evaluation of workforce training programs; (iv) one representative of the Department of Labor and Industry who shall have expertise in labor and employment law; (v) one representative of the Department who shall be knowledgeable of the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), as amended, and the Temporary Assistance for Needy Families Program; (vi) one representative of a local department who shall have expertise and experience in assisting chronically unemployed and hard-to-employ persons, designated by the Commissioner; (vii) one representative of the Department of Corrections, who shall have expertise in the education and job training programs offered to incarcerated persons, and the Department of Corrections' transition and job placement programs that are available to persons leaving the correctional system; (viii) one representative of a local workforce investment board, designated by the Commissioner of the Virginia Employment Commission; and (ix) one representative of four-year institutions of higher education whose service areas and student populations are comprised of disproportionately high percentages of disadvantaged persons, designated by the Chairman of the State Council of Higher Education.

The Commissioner shall provide written notification to the respective agency heads of the reestablishment of the Economic and Employment Improvement Program for Disadvantaged Persons Grant Awards Committee, and shall request that the respective agency head designate the appropriate persons to represent the agency on the Awards Committee.

B. Upon the appropriation of funds for this purpose and from such gifts, donations, grants, bequests, and other funds as may be received by the Department on behalf of the Economic and Employment Improvement Program, the Committee shall issue a request for proposals for grant projects designed to improve the employability of and provide assistance to disadvantaged persons through education and skills training. The Committee shall review each grant application, make grant awards in accordance with the eligibility criteria established in this section, and evaluate the effectiveness of the educational and skills training services delivered by the funded projects. The Committee shall report the results of its evaluation annually, on or before July 1, to the governing boards of agencies represented on the Committee, to the Governor, and to the General Assembly.

C. On and after July 1, 2000, the Economic and Employment Improvement Program shall consist of no more than ten grant projects, including projects awarded grants by the Governor's Employment and Training Department and in existence on July 1, 1999, located in regions throughout the Commonwealth to provide equal geographical distribution of such projects. Priority for awarding such grants shall be given to projects designed to serve persons who are (i) historically underrepresented in Virginia institutions of higher education, and in management and at administrative levels in the business community; (ii) residing in counties, cities, and towns with high local stress indicators and in economically depressed regions of the Commonwealth; (iii) disproportionately represented in the workforce in minimum wage jobs and occupations requiring minimum education, training, and skills; (iv) ineligible to continue to receive public assistance under state and federal laws; (v) eligible to participate in the Temporary Assistance for Needy Families Program; (vi) returning to the community from state and federal correctional institutions; (vii) chronically unemployed or hard-to-employ; (viii) displaced by technological advances in industry; or (ix) subject to any combination thereof. Education and job training programs shall be designed to enable individuals to move from minimum wage jobs to higher-salaried occupations and employment opportunities and to pursue careers and professions. Grants for all projects shall be awarded on a competitive basis to applicants responding to requests for proposals.

D. Eligible projects shall (i) satisfy the criteria for receiving awards, pursuant to subsection C of this section; (ii) provide educational programs, job training opportunities, or other support services to

improve the employability of persons ineligible to continue to receive public assistance, or who are eligible to participate in the programs included in the Temporary Assistance for Needy Families Program, or populations experiencing high rates of unemployment or underemployment; (iii) provide training and education reflective of current and projected workforce needs in the Commonwealth that will enable persons to move from minimum wage jobs to higher-salaried occupations, careers, and professions; (iv) provide coordinated delivery of services, such as community-business partnerships and community outreach programs through the schools or departments of business at two-year and four-year public and private institutions of higher education; (v) include a component to evaluate the effectiveness of the delivery of educational and job skills training services; and (vi) encourage mentoring through partnerships between institutions of higher education, corporations, and small businesses. Grant recipients may work collaboratively, upon request, to provide approved service delivery. Participants in the Economic and Employment Improvement Program that are not participating in the Virginia Initiative for Employment Not Welfare shall be required to work a minimum of eight hours per week in paid employment during the Economic and Employment Improvement Program.

CHAPTER 8.

OTHER GRANTS OF PUBLIC ASSISTANCE.

§ 63.2-800. Auxiliary grants program; administration of program.

A. The Board is authorized to prepare and implement, effective with repeal of Titles I, X, and XIV of the Social Security Act, a plan for a state and local funded auxiliary grants program to provide assistance to certain individuals ineligible for benefits under Title XVI of the Social Security Act, as amended, and to certain other individuals for whom benefits provided under Title XVI of the Social Security Act, as amended, are not sufficient to maintain the minimum standards of need established by the Board. The plan shall be in effect in all political subdivisions in the Commonwealth and shall be administered in conformity with Board regulations.

Nothing herein is to be construed to affect any such section as it relates to Temporary Assistance for Needy Families, general relief or services to persons eligible for assistance under Public Law 92-603 enacted by the Ninety-second United States Congress.

B. Those individuals who receive an auxiliary grant and who reside in licensed assisted living facilities or adult foster care homes shall be entitled to a personal needs allowance when computing the amount of the auxiliary grant. The amount of such personal needs allowance shall be set forth in the appropriation act.

C. The Board shall adopt regulations for the administration of the auxiliary grants program that shall include requirements for the Department to use in establishing auxiliary grant rates for licensed assisted living facilities and adult foster care homes. At a minimum these requirements shall address (i) the process for the facilities and homes to use in reporting their costs, including allowable costs and resident charges, the time period for reporting costs, forms to be used, financial reviews and audits of reported costs; (ii) the process to be used in calculating the auxiliary grant rates for the facilities and homes; and (iii) the services to be provided to the auxiliary grant recipient and paid for by the auxiliary grant and not charged to the recipient's personal needs allowance.

D. In order to receive an auxiliary grant while residing in an assisted living facility, an individual shall have been evaluated by a case manager or other qualified assessor to determine his need for residential living care. An individual may be admitted to an assisted living facility pending evaluation and assessment as allowed by Board regulations, but in no event shall any public agency incur a financial obligation if the individual is determined ineligible for an auxiliary grant. For purposes of this section, "case manager" means an employee of a human services agency who is qualified and designated to develop and coordinate plans of care. The Board shall adopt regulations to implement the provisions of this subsection.

§ 63.2-801. Food stamp program.

The Board is authorized, in accordance with the federal Food Stamp Act, to implement a food stamp program in which each political subdivision in the Commonwealth shall participate. Such program shall be administered in conformity with the Board regulations.

§ 63.2-802. Eligibility for general relief.

If a local board has exercised its option to establish a program of general relief, a person shall be eligible for such components of the general relief program as the locality chooses to provide if he is in need of general relief. The establishment of and continued participation in such general relief program shall be optional with the local board. Nothing contained in this section shall restrict the authority of a local board under § 63.2-314. No person shall be deemed to be in need of general relief, however, if he fails to accept available employment which is appropriate to his physical and mental abilities and training, taking into consideration his home and family responsibilities which would affect his availability for employment. Prepaid funeral expenses, which do not exceed an amount established by the Board, shall not be considered a financial asset in determining a person's eligibility for general

relief.

§ 63.2-803. Payment for legal services in claims for Supplemental Security Income.

The Commissioner shall establish an advocacy project to assist recipients of general relief or children entrusted or committed to foster care who may be eligible for federal Supplemental Security Income (SSI) benefits in obtaining such benefits. Local departments may determine and refer appropriate potential SSI claimants to attorneys, or advocates working under the supervision of an attorney, for representation under this project. This project shall provide for disbursements to any such attorney or advocate upon receipt of a favorable decision in such referred claims.

Such disbursements shall be in an amount determined by the Board to be sufficient to ensure prompt and adequate representation of such recipients. This amount shall not exceed the lesser of the recoupment for state and local assistance paid, as provided by the Social Security Act, 42 U.S.C. § 1383 (g), as amended, or twenty-five percent of the maximum federal back-due SSI grant payable to an individual.

Such disbursement shall be made upon submission by the attorney of a petition and a copy of the favorable decision. Petitions must be presented within sixty days of the favorable Social Security Administration decision.

The Board, in consultation with the Virginia State Bar, shall adopt regulations necessary to implement this section.

§ 63.2-804. Eligibility to receive convict-made dentures.

Any person who is a recipient of dental care provided by the Department of Health is eligible to receive, if so prescribed, dentures manufactured in a state correctional facility.

§ 63.2-805. Home Energy Assistance Program.

A. The General Assembly declares that it is the policy of this Commonwealth to support the efforts of public agencies, private utility service providers, and charitable and community groups seeking to assist low-income Virginians in meeting their residential energy needs. To this end, the Department is designated as the state agency responsible for coordinating state efforts in this regard.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Home Energy Assistance Fund, hereinafter the "Fund." Moneys in the Fund shall be used to:

1. Supplement the assistance provided through the Department's administration of the federal Low-Income Home Energy Assistance Program Block Grant; and

2. Assist the Commonwealth in maximizing the amount of federal funds available under the Low-Income Home Energy Assistance Program and the Weatherization Assistance Program by providing funds to comply with fund-matching requirements, and by means of leveraging in accordance with the rules set by the Home Energy Assistance Program.

The Fund shall be established on the books of the Comptroller. The Fund shall consist of donations and contributions to the Fund and such moneys as shall be appropriated by the General Assembly. Interest earned on money in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes set forth in this section. The State Treasurer shall make expenditures and disbursements from the Fund on warrants issued by the Comptroller upon written request signed by the Commissioner. Up to twelve percent of the Fund may be used to pay the Department's expenses in administering the Home Energy Assistance Program.

C. The Department shall establish and operate the Home Energy Assistance Program. In administering the Home Energy Assistance Program, it shall be the responsibility of the Department to:

1. Administer distributions from the Fund; and

2. Report annually to the Governor and the General Assembly on or before October 1 of each year on the effectiveness of low-income energy assistance programs in meeting the needs of low-income Virginians.

The Department is authorized to assume responsibility for administering all or any portion of any private, voluntary low-income energy assistance program upon the application of the administrator thereof, on such terms as the Department and such administrator shall agree and in accordance with applicable law and regulations. If the Department assumes administrative responsibility for administering such a voluntary program, it is authorized to receive funds collected through such voluntary program and distribute them through the Fund.

D. Local departments may, to the extent that funds are available, promote interagency cooperation at the local level by providing technical assistance, data collection and service delivery.

E. Subject to Board regulations and to the availability of state or private funds for low-income households in need of energy assistance, the Department is authorized to:

1. Receive state and private funds for such services; and

2. Disburse funds to state agencies, and vendors of energy services, to provide energy assistance

programs for low-income households.

F. Actions of the Department relating to the review, allocation and awarding of benefits and grants shall be exempt from the provisions of Article 3 (§ 2.2-4018 et seq.) and Article 4 (§ 2.2-4024 et seq.) of Chapter 40 of the Administrative Process Act (§ 2.2-4000 et seq.).

G. No employee or former employee of the Department shall divulge any information acquired by him in the performance of his duties with respect to the income or assistance eligibility of any individual or household obtained in the course of administering the Home Energy Assistance Program, except in accordance with proper judicial order. The provisions of this section shall not apply to (i) acts performed or words spoken or published in the line of duty under law; (ii) inquiries and investigations to obtain information as to the implementation of this chapter by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information shall be privileged; or (iii) the publication of statistics so classified as to prevent the identification of any individual or household.

Subtitle III.

Social Services Programs.

CHAPTER 9.

FOSTER CARE.

§ 63.2-900. Accepting children for placement in homes, facilities, etc., by local boards.

A. Pursuant to § 63.2-319, a local board shall have the right to accept for placement in suitable family homes, children's residential facilities or independent living arrangements, subject to the supervision of the Commissioner and in accordance with regulations adopted by the Board, such persons under eighteen years of age as may be entrusted to it by the parent, parents or guardian, committed by any court of competent jurisdiction, or placed through an agreement between it and the parent, parents or guardians where legal custody remains with the parent, parents, or guardians. The Board shall adopt regulations for the provision of foster care services by local boards, which shall be directed toward the prevention of unnecessary foster care placements and towards the immediate care of and permanent planning for children in the custody of or placed by local boards and which shall achieve, as quickly as practicable, permanent placements for such children. The local board shall, in accordance with the regulations adopted by the Board and in accordance with the entrustment agreement or other order by which such person is entrusted or committed to its care, have custody and control of the person so entrusted or committed to it until he is lawfully discharged, has been adopted or has attained his majority. Whenever a local board places a child where legal custody remains with the parent, parents or guardians, the board shall enter into an agreement with the parent, parents or guardians. The agreement shall specify the responsibilities of each for the care and control of the child. The local board shall have authority to place for adoption, and to consent to the adoption of, any child properly committed or entrusted to its care when the order of commitment or entrustment agreement between the parent or parents and the agency provides for the termination of all parental rights and responsibilities with respect to the child for the purpose of placing and consenting to the adoption of the child. The local board shall also have the right to accept temporary custody of any person under eighteen years of age taken into custody pursuant to subdivision B of § 16.1-246 or § 63.2-1517. The placement of a child in a foster home, whether within or without the Commonwealth, shall not be for the purpose of adoption unless the placement agreement between the foster parents and the local board specifically so stipulates.

B. Prior to placing any such child in any foster home or children's residential facility, the local board shall enter into a written agreement with the foster parents or other appropriate custodian setting forth therein the conditions under which the child is so placed pursuant to § 63.2-902. However, if a child is placed in a children's residential facility licensed as a temporary emergency shelter, and a verbal agreement for placement is secured within eight hours of the child's arrival at the facility, the written agreement does not need to be entered into prior to placement, but shall be completed and signed by the local board and the facility representative within twenty-four hours of the child's arrival or by the end of the next business day after the child's arrival.

§ 63.2-901. Supervision of placement of children in homes.

The local director shall supervise the placement in suitable homes of children placed through an agreement with the parents or guardians or entrusted or committed to the local board pursuant to §§ 63.2-900, 63.2-902 and 63.2-903.

§ 63.2-902. Agreements with persons taking children.

Every local board and licensed child-placing agency shall, with respect to each child placed by it in a foster home or children's residential facility, enter into a written agreement with the head of such home or facility, which agreement shall provide that the authorized representatives of the local board or agency shall have access at all times to such child and to the home or facility, and that the head of the home or facility will release custody of the child so placed to the authorized representatives of the local

board or agency whenever, in the opinion of the local board or agency, or in the opinion of the Commissioner, it is in the best interests of the child.

§ 63.2-903. Entrustment agreements; adoption.

A. Whenever a local board accepts custody of a child pursuant to an entrustment agreement entered into under the authority of § 63.2-900, or a licensed child-placing agency accepts custody of a child pursuant to an entrustment agreement entered into under the authority of § 63.2-1817, in the city or county juvenile and domestic relations district court a petition for approval of the entrustment agreement (i) shall be filed within a reasonable period of time, not to exceed eighty-nine days after the execution of an entrustment agreement for less than ninety days, if the child is not returned to his home within that period; (ii) shall be filed within a reasonable period of time, not to exceed thirty days after the execution of an entrustment agreement for ninety days or longer or for an unspecified period of time, if such entrustment agreement does not provide for the termination of all parental rights and responsibilities with respect to the child; and (iii) may be filed in the case of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child.

B. For purposes of §§ 63.2-900, 63.2-1817 and this section, a parent who is less than eighteen years of age shall be deemed fully competent and shall have legal capacity to execute a valid entrustment agreement, including an agreement that provides for the termination of all parental rights and responsibilities, and shall be as fully bound thereby as if such parent had attained the age of eighteen years. An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the father of a child born out of wedlock if the identity of the father is not reasonably ascertainable, or if such father is given notice of the entrustment by registered or certified mail to his last known address and fails to object to the entrustment within twenty-one days of mailing of such notice. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence that would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the father is reasonably ascertainable. For purposes of determining whether the identity of the father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the mother and the father.

C. An entrustment agreement for the termination of parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child when such father has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63 or subsection B of § 18.2-366, and the child was conceived as a result of such violation.

D. A child may be placed for adoption by a licensed child-placing agency or a local board, in accordance with the provisions of § 63.2-1221.

§ 63.2-904. Investigation, visitation and supervision of foster homes or independent living placement; removal of child.

A. Before placing or arranging for the placement of any such child in a foster home or independent living placement, a local board or licensed child-placing agency shall cause a careful study to be made to determine the suitability of such home or independent placement, and after placement shall cause such home or independent placement and child to be visited as often as necessary to protect the interests of such child.

B. Every local board or licensed child-placing agency that places a child in a foster home or independent living placement shall maintain such supervision over such home or independent living placement as shall be required by the standards and policies established by the Board.

C. Whenever any child placed by a local board or licensed child-placing agency and still under its control or supervision is subject, in the home in which he is placed, to unwholesome influences or to neglect or mistreatment, or whenever the Commissioner shall so order, such local board or agency shall cause the child to be removed from such home and shall make for him such arrangements as may be approved by the Commissioner.

§ 63.2-905. Foster care services.

Foster care services are 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 § 16.1-228 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 or the public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardians, or (iii) has been committed or entrusted to a local board or licensed child placing agency.

§ 63.2-906. Foster care plans; permissible plan goals; court review of foster children.

A. Each child, who is committed or entrusted to the care of a local board or to a licensed

child-placing agency, or who is placed through an agreement between a local board or a public agency designated by the community policy and management team and the parent, parents or guardians where legal custody remains with the parent, parents or guardians, shall have a foster care plan as specified in § 16.1-281.

A court may place a child in the care and custody of (i) a public agency in accordance with § 16.1-251 or § 16.1-252, and (ii) a public or licensed private child-placing agency in accordance with §§ 16.1-278.2, 16.1-278.4, 16.1-278.5, 16.1-278.6 or § 16.1-278.8. Children may be placed by voluntary relinquishment in the care and custody of a public or private agency in accordance with § 16.1-277.01 or §§ 16.1-277.02 and 16.1-278.3. Children may be placed through an agreement where legal custody remains with the parent, parents or guardians in accordance with §§ 63.2-900 and 63.2-903 or § 2.2-5208.

B. Each child in foster care shall be assigned a permanent plan goal to be reviewed and approved by the juvenile and domestic relations district court having jurisdiction of the child's case. Permissible plan goals are to:

1. Transfer custody of the child to his prior family;

2. Transfer custody of the child to a relative other than his prior family;

3. Finalize an adoption of the child;

4. Place the child in permanent foster care;

5. Achieve independent living; or

6. Place the child in another planned permanent living arrangement in accordance with subsection A 2 of § 16.1-282.1.

C. Each child in foster care shall be subject to the permanency planning and review procedures established in §§ 16.1-281, 16.1-282 and 16.1-282.1.

§ 63.2-907. Administrative review of children in foster care.

Each local board shall establish and keep current a social service plan with service objectives and shall provide the necessary social services for achievement of a permanent home for each child for whom it has care and custody or has an agreement with the parents or guardians to place in accordance with regulations adopted by the Board. Each local board shall review the cases of children placed through an agreement or in its custody in accordance with the regulations adopted by the Board. Each local board shall review the cases of children placed through an agreement or in its custody on a planned basis to evaluate the current status and effectiveness (i) of the service plan's objectives and (ii) of the services being provided for each child in custody, which are directed toward the immediate care of and planning for permanency for the child, in accordance with policies of the Board.

The Department shall establish and maintain (a) a system to review and monitor compliance by local boards with the policies adopted by the Board and (b) a tracking system of every child in the care and custody of or placed by local boards in order to monitor the effectiveness of service planning, service objectives and service delivery by the local boards that shall be directed toward the achievement of permanency for children in foster care.

The Board shall adopt regulations necessary to implement the procedures and policies set out in this section. The Board shall establish as a goal that at any point in time the number of children who are in foster care for longer than twenty-four months shall not exceed 5,500 children.

§ 63.2-908. Permanent foster care placement.

A. Permanent foster care placement means the place in which a child has been placed pursuant to the provisions of §§ 63.2-900, 63.2-903 and this section with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or § 63.2-1517. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

B. A local department or a licensed child-placing agency shall have authority pursuant to a court order to place a child over whom it has legal custody in a permanent foster care placement where the child shall remain until attaining majority or thereafter, until the age of twenty-one years, if such placement is a requisite to providing funds for the care of such child, so long as the child is a participant in an educational, treatment or training program approved pursuant to regulations of the Board. No such child shall be removed from the physical custody of the foster parents in the permanent care placement except upon order of the court or pursuant to § 16.1-251 or § 63.2-1517. The department or agency so placing a child shall retain legal custody of the child. A court shall not order that a child be placed in permanent foster care unless it finds that (i) diligent efforts have been made by the local department to place the child with his natural parents and such efforts have been unsuccessful, and (ii) diligent efforts have been made by the local department to place the child for adoption and such efforts have been unsuccessful or adoption is not a reasonable alternative for a long-term placement for the child under the circumstances.

C. Unless modified by the court order, the foster parent in the permanent foster care placement shall have the authority to consent to surgery, entrance into the armed services, marriage, application for a motor vehicle and driver's license, application for admission into college and any other such activities that require parental consent and shall have the responsibility for informing the placing department or agency of any such actions.

D. Any child placed in a permanent foster care placement by a local department shall, with the cooperation of the foster parents with whom the permanent foster care placement has been made, receive the same services and benefits as any other child in foster care pursuant to §§ 63.2-319, 63.2-900 and 63.2-903 and any other applicable provisions of law.

E. The Board shall establish minimum standards for the utilization, supervision and evaluation of permanent foster care placements.

F. The rate of payment for permanent foster care placements by a local department shall be in accordance with standards and rates established by the Board. The rate of payment for such placements by other licensed child-placing agencies shall be in accordance with standards and rates established by the individual agency.

G. If the child has a continuing involvement with his natural parents, the natural parents should be involved in the planning for a permanent placement. The court order placing the child in a permanent placement shall include a specification of the nature and frequency of visiting arrangements with the natural parents.

H. Any change in the placement of a child in permanent foster care or the responsibilities of the foster parents for that child shall be made only by order of the court which ordered the placement pursuant to a petition filed by the foster parents, local department, licensed child-placing agency or other appropriate party.

§ 63.2-909. Child support for child placed in foster care by court.

Pursuant to § 16.1-290, responsible persons shall pay child support for a child placed in foster care from the date that custody was awarded to the local department. The court order shall state the names of the responsible persons obligated to pay support, and either specify the amount of the support obligation pursuant to §§ 20-108.1 and 20-108.2 or indicate that the Division of Child Support Enforcement will establish the amount of the support obligation. In fixing the amount of support, the court or the Division of Child Support Enforcement shall consider the extent to which the payment of support by the responsible person may affect the ability of such responsible person to implement a foster care plan developed pursuant to § 16.1-281.

§ 63.2-910. Child support for child placed in foster care where legal custody remains with parent or guardian.

Responsible persons shall pay child support for a child placed in foster care through an agreement where legal custody remains with the parent or guardian pursuant to subdivision 4 of § 16.1-278.2 or § 63.2-900, from the date that the child was placed in foster care. The agreement between the parents and the local board or public agency shall include provisions for the payment of child support. In fixing the amount of support, the court, the Division of Child Support Enforcement, the local board or the public agency shall consider the extent to which the payment of support by the responsible person may affect the ability of such responsible person to implement a foster care plan. If the responsible person fails or refuses to pay such sum on a timely basis, the local board or public agency may petition the juvenile court to order such payment.

§ 63.2-911. Liability insurance for foster parents.

The Department may provide liability insurance for civil matters for persons providing basic foster care services in foster homes, as defined in §§ 63.2-100 and 63.2-905, that are approved by local boards for children in their custody or children who the board has entered into an agreement to place where legal custody remains with the parents or guardians.

§ 63.2-912. Visitation of child placed in foster care.

The circuit courts and juvenile and domestic relations district courts shall have the authority to grant visitation rights to the natural parents and grandparents of any child entrusted or committed to foster care if the court finds (i) that the parent or grandparent had an ongoing relationship with the child prior to his being placed in foster care and (ii) it is in the best interests of the child that the relationship continue. The order of the court committing the child to foster care shall state the nature and extent of any visitation rights granted as provided in this section.

CHAPTER 10.

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN.

§ 63.2-1000. Interstate Compact on the Placement of Children; form of compact.

The Governor of Virginia is hereby authorized and requested to execute, on behalf of the Commonwealth of Virginia, with any other state or states legally joining therein, a compact which shall be in form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I.

Purpose and Policy.

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II.

Definitions.

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III.

Conditions for Placement.

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV.

Penalty for Illegal Placement.

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any

such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V.

Retention of Jurisdiction.

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such cases by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI.

Institutional Care of Delinquent Children.

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII.

Compact Administrator.

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have the power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII.

Limitations.

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX.

Enactment and Withdrawal.

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X.

Construction and Severability.

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this

compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

CHAPTER 11.

IMPLEMENTATION OF THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN.

§ 63.2-1100. Definitions.

For the purposes of Chapter 10 (§ 63.2-1000 et seq.) of this title, the following words shall have the meaning ascribed to them by this section:

A. "Appropriate public authorities" as used in Article III of the compact means, with reference to this Commonwealth, the Department.

B. "Appropriate authority in the receiving state" as used in subdivision (a) of Article V of the compact means, with reference to this Commonwealth, the Commissioner.

§ 63.2-1101. Discharging financial responsibilities imposed by compact or agreement.

Financial responsibility for any child placed pursuant to the provisions of Chapter 10 (§ 63.2-1000 et seq.) of this title shall be determined in accordance with the provision of Article V of the compact. In the event of partial or complete default of performance thereunder, the provisions of Chapter 19 (§ 63.2-1900 et seq.) of this title may also be invoked.

§ 63.2-1102. Supplementary agreements.

The officers and agencies of this Commonwealth and its subdivisions having authority to place children are hereby empowered to enter into supplementary agreements with appropriate officers or agencies in other party states pursuant to subdivision (b) of Article V of the compact pursuant to Chapter 10 (§ 63.2-1000 et seq.) of this title. Any such agreement which contains a financial commitment or imposes a financial obligation on this Commonwealth or on a subdivision or agency thereof is subject to the written approval of the State Comptroller and of the chief fiscal officer of the subdivision involved.

§ 63.2-1103. Fulfilling requirements for visitation, inspection or supervision.

Requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state set forth in Subtitle IV (§ 63.2-1700 et seq.) of this title shall be deemed to be fulfilled if performed by an authorized public or private agency in the receiving state pursuant to an agreement entered into by appropriate officers or agencies of this Commonwealth or of a subdivision thereof as provided in subdivision (b) of Article V of the compact pursuant to Chapter 10 (§ 63.2-1000 et seq.) of this title.

§ 63.2-1104. Children from other states and countries.

A. Any child-placing agency or court that brings or sends, or causes to be brought or sent, a nonresident child into Virginia for the purpose of an interstate placement shall comply with the regulations and procedures adopted by the Board for the administration of the Interstate Compact on the Placement of Children (§ 63.2-1000 et seq.) regardless of whether the state from which the child is sent is a party to the compact. The agency shall also comply with all the regulations of the Board relating to nonresident children so brought or sent into the Commonwealth. Intercountry placements made by licensed child-placing agencies, courts, or other entities are subject to regulations prescribed by the Board.

B. The Board is authorized to adopt regulations for the bringing or sending of such children into the Commonwealth by child-placing agencies or courts for the purpose of an interstate placement, and for the care, maintenance, supervision and control of all children so brought or sent into the Commonwealth until they have been adopted, attained their majority, or have been otherwise lawfully discharged or released, as are reasonably conducive to the welfare of such children and as comply with the provisions of the Interstate Compact on the Placement of Children (§ 63.2-1000 et seq.).

§ 63.2-1105. Children placed out of Commonwealth.

A. Any child-placing agency, licensed pursuant to Subtitle IV (§ 63.2-1700 et seq.), local board or court that takes or sends, or causes to be taken or sent, any resident child out of the Commonwealth for the purpose of an interstate or intercountry placement shall comply with the appropriate provisions of the Interstate Compact on the Placement of Children (§ 63.2-1000 et seq.) or shall first obtain the consent of the Commissioner, given in accordance with regulations of the Board relating to resident children so taken or sent out of the Commonwealth.

B. The Board is authorized to adopt regulations for the placement of children out of the Commonwealth by licensed child-placing agencies, local boards or courts as are reasonably conducive to the welfare of such children and as comply with the Interstate Compact on the Placement of Children (§ 63.2-1000 et seq.). Provided, however, notwithstanding the provisions of subdivision (d) of Article II

of the compact that exclude from the definition of "placement" those institutions that care for the mentally ill, mentally defective or epileptic or any institution primarily educational in character and any hospital or other medical facility, the Board shall prescribe procedures and regulations to govern such placements out of the Commonwealth by licensed child-placing agencies, local boards or courts.

CHAPTER 12.

ADOPTION.

Article 1.

General Provisions.

§ 63.2-1200. Who may place children for adoption.

A child may be placed for adoption by:

1. A licensed child-placing agency;

2. A local board;

3. The child's parent or legal guardian if the placement is a parental placement; and

4. Any agency outside the Commonwealth that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates.

§ 63.2-1201. Filing of petition for adoption; venue; jurisdiction; and proceedings.

Proceedings for the adoption of a minor child and for a change of name of such child shall be instituted only by petition to a circuit court in the county or city in which the petitioner resides or in the county or city in which is located the child-placing agency that placed the child. Such petition may be filed by any natural person who resides in the Commonwealth or who has custody of a child placed by a child-placing agency of the Commonwealth, for leave to adopt a minor child not legally his by birth and, if it is so desired by the petitioner, also to change the name of such child. In the case of married persons, the petition shall be the joint petition of the husband and wife but, in the event the child to be adopted is legally the child by birth or adoption of one of the petitioners, such petitioner shall unite in the petition for the purpose of indicating consent to the prayer thereof only. The petition shall contain a full disclosure of the circumstances under which the child came to live, and is living, in the home of the petitioner. Each petition for adoption shall be signed by the petitioner as well as by counsel of record, if any. In any case in which the petition seeks the entry of an adoption order without referral for investigation, the petition shall be under oath.

A single petition for adoption under the provisions of this section shall be sufficient for the concurrent adoption by the same petitioners of two or more children who have the same birth parent or parents, and nothing in this section shall be construed as having heretofore required a separate petition for each of such children.

§ 63.2-1202. Parental, or agency, consent required; exceptions.

A. No petition for adoption shall be granted, except as hereinafter provided in this section, unless written consent to the proposed adoption is filed with the petition. Such consent shall be signed and acknowledged before an officer authorized by law to take acknowledgments. The consent of a birth parent for the adoption of his child placed directly by the birth parent shall be executed as provided in § 63.2-1233, and the circuit court may accept a certified copy of an order entered pursuant to § 63.2-1233 in satisfaction of all requirements of this section, provided the order clearly evidences compliance with the applicable notice and consent requirements of § 63.2-1233.

B. A birth parent who has not reached the age of eighteen shall have legal capacity to give consent to adoption and shall be as fully bound thereby as if the birth parent had attained the age of eighteen years.

C. Consent shall be executed:

1. By the parents or surviving parent of a child born in wedlock. A child born to a married birth mother shall be presumed to be the child of her husband and his consent shall be required. This presumption may be rebutted by sufficient evidence, satisfactory to the circuit court, which would establish by a preponderance of the evidence the paternity of another man, or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child, in such case his consent shall not be required. If the parents are divorced and the residual parental rights and responsibilities as defined in § 16.1-228 of one parent have been terminated by terms of the divorce, or other order of a court having jurisdiction, the petition may be granted without the consent of such parent; or

2. By the parents or surviving parent of a child born to parents who were not married to each other at the time of the child's conception or birth. The consent of the birth father of a child born to parents who were not married to each other at the time of the child's conception or birth shall not be required (i) if the identity of the birth father is not reasonably ascertainable or (ii) if the identity of such birth father is ascertainable and his whereabouts are known, such birth father is given notice of the adoption proceeding, including the date and location of the hearing, by registered or certified mail to his last known address, and such birth father fails to object to the adoption proceeding within twenty-one days

of the mailing of such notice. Such objection shall be in writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with the clerk of the circuit court in which the petition was filed during the business day of the court, within the time period specified in this section. Failure of the objecting party to appear at the consent hearing, either in person or by counsel, shall constitute a waiver of such objection; or

3. By the child-placing agency or the local board having custody of the child, with right to place him for adoption, through court commitment or parental agreement as provided in §§ 63.2-900, 63.2-903 or § 63.2-1221; or an agency outside the Commonwealth that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates; and

4. By the child if he is fourteen years of age or older, unless the circuit court finds that the best interests of the child will be served by not requiring such consent.

D. No consent shall be required of the birth father of a child when the birth father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63 or subsection B of § 18.2-366, and the child was conceived as a result of such violation.

E. When a child has been placed by the birth parent(s) with the prospective adoptive parent(s) who is the child's grandparent, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt, the circuit court may accept the written and signed consent of the birth parent(s) that has been acknowledged by an officer authorized by law to take such acknowledgments.

§ 63.2-1203. When consent is withheld or unobtainable.

A. If, after consideration of the evidence, the circuit court finds that the valid consent of any person or agency whose consent is required is withheld contrary to the best interests of the child as set forth in § 63.2-1205, or is unobtainable, the circuit court may grant the petition without such consent:

1. Twenty-one days after personal service of notice of petition on the party or parties whose consent is required by this section; or

2. If personal service is unobtainable, ten days after the completion of the execution of an order of publication against the party or parties whose consent is required by this section concerning the petition; or

3. If the judge certifies on the record that the identity of any person whose consent is hereinabove required is not reasonably ascertainable.

An affidavit of the birth mother that the identity of the birth father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the circuit court that would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the birth father is reasonably ascertainable. For purposes of determining whether the identity of the birth father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the birth mother and the birth father.

B. If the child is not in the custody of a child-placing agency and both parents are deceased, the circuit court, after hearing evidence to that effect, may grant the petition without the filing of any consent.

§ 63.2-1204. When consent is revocable; fraud or duress; mutual consent.

Parental consent to an adoption shall be revocable prior to the final order of adoption (i) upon proof of fraud or duress or (ii) after placement of the child in an adoptive home, upon written, mutual consent of the birth parents and prospective adoptive parents.

§ 63.2-1205. Best interests of the child; standards for determining.

In determining whether the valid consent of any person whose consent is required is withheld contrary to the best interests of the child, or is unobtainable, the juvenile and domestic relations district court shall consider whether the failure to grant the petition pending before it would be detrimental to the child. In determining whether the failure to grant the petition would be detrimental to the child, the juvenile and domestic relations district court shall consider all relevant factors, including the birth parent(s)' efforts to obtain or maintain legal and physical custody of the child; whether the birth parent(s)' efforts to assert parental rights were thwarted by other people; the birth parent(s)' ability to care for the child; the age of the child; the quality of any previous relationship between the birth parent(s) and the child and between the birth parent(s) and any other minor children; the duration and suitability of the child's present custodial environment; and the effect of a change of physical custody on the child.

§ 63.2-1206. No parental presumption after revocation period expires.

If, after the expiration of the appropriate revocation period provided for in § 63.2-1223 or § 63.2-1234, a birth parent or an alleged birth parent attempts to obtain or regain custody of or attempts to exercise parental rights to a child who has been placed for adoption, there shall be no parental presumption in favor of any party. Upon the motion of any such birth parent or alleged birth parent, or upon the motion of any person or agency with whom the child has been placed, the circuit or

juvenile and domestic relations district court shall determine (i) whether the birth parent or alleged birth parent is a person whose consent to the adoption is required and, if so, then (ii) pursuant to § 63.2-1205, whether, in the best interest of the child, the consent of the person whose consent is required is being withheld contrary to the best interest of the child or is unobtainable.

§ 63.2-1207. Removal of child from adoptive home.

When a child is placed in an adoptive home pursuant to an adoptive home placement agreement by a local board or by a licensed child-placing agency pursuant to § 63.2-1221, or by the birth parent or legal guardian of the child pursuant to § 63.2-1230, and a circuit court of competent jurisdiction has not entered an interlocutory order of adoption, such child shall not be removed from the physical custody of the adoptive parents, except (i) with the consent of the adoptive parents; (ii) upon order of the juvenile and domestic relations district court or the circuit court of competent jurisdiction; (iii) pursuant to § 63.2-904, which removal shall be subject to review by the juvenile and domestic relations district court upon petition of the adoptive parents; or (iv) upon order of the juvenile and domestic relations district court that accepted consent when consent has been revoked as authorized by § 63.2-1204 or § 63.2-1223.

When a child has been placed in an adoptive home directly by the birth parents or legal guardian of the child, the adoptive parents have been granted custody of the child pursuant to § 63.2-1233, and it becomes necessary to remove the child from the home of the adoptive parents, the juvenile and domestic relations district court entering such an order shall order that any consent given for the purposes of such placement shall be void and shall determine the custody of the child.

§ 63.2-1208. Investigations; report to circuit court.

A. Upon receiving a petition and order of reference from the circuit court, the applicable agency shall make a thorough investigation of the matter and report thereon in writing, in such form as the Commissioner may prescribe, to the circuit court within ninety days after the copy of the petition and all exhibits thereto are forwarded. A copy of the report to the circuit court shall be served on the Commissioner by delivering or mailing a copy to him on or before the day of filing the report with the circuit court. On the report to the circuit court there shall be appended either acceptance of service or certificate of the local director, or the representative of the child-placing agency, that copies were served as this section requires, showing the date of delivery or mailing. The Commissioner may notify the circuit court within twenty-one days of the date of delivery or mailing of the report as shown by the agency, during which time the circuit court shall withhold consideration of the merits of the petition pending review of the agency report by the Commissioner, of any disapproval thereof stating reasons for any further action on the report that he deems necessary.

B. If the report is not made to the circuit court within the periods specified, the circuit court may proceed to hear and determine the merits of the petition and enter such order or orders as the circuit court may deem appropriate.

C. The investigation requested by the circuit court shall include, in addition to other inquiries that the circuit court may require the child-placing agency or local director to make, inquiries as to (i) whether the petitioner is financially able, except as provided in Chapter 13 (§ 63.2-1300 et seq.) of this title, morally suitable, in satisfactory physical and mental health and a proper person to care for and to train the child; (ii) what the physical and mental condition of the child is; (iii) why the parents, if living, desire to be relieved of the responsibility for the custody, care and maintenance of the child, and what their attitude is toward the proposed adoption; (iv) whether the parents have abandoned the child or are morally unfit to have custody over him; (v) the circumstances under which the child came to live, and is living, in the same home of the petitioner; (vi) whether the child is a suitable child for adoption by the petitioner; and (vii) what fees have been paid by the petitioners or on their behalf to persons or agencies that have assisted them in obtaining the child. Any report made to the circuit court shall include a recommendation as to the action to be taken by the circuit court on the petition. A copy of any report made to the circuit court shall be furnished to counsel of record representing the adopting parent or parents. When the investigation reveals that there may have been a violation of § 63.2-1200 or § 63.2-1218, the local director or child-placing agency shall so inform the circuit court and the Commissioner.

D. The report shall include the relevant physical and mental history of the birth parents if known to the person making the report. However, nothing in this subsection shall require that an investigation of the physical and mental history of the birth parents be made.

E. If the specific provisions set out in §§ 63.2-1228, 63.2-1238, 63.2-1242 and 63.2-1244 do not apply, the petition and all exhibits shall be forwarded to the local director where the petitioners reside or to a licensed child-placing agency.

§ 63.2-1209. Entry of interlocutory order.

If, after considering the home study or any required report, the circuit court is satisfied that all of the applicable requirements have been complied with, that the petitioner is financially able to maintain

adequately, except as provided in Chapter 13 (§ 63.2-1300 et seq.) of this title, and is morally suitable and a proper person to care for and train the child, that the child is suitable for adoption by the petitioner, and that the best interests of the child will be promoted by the adoption, it shall enter an interlocutory order of adoption declaring that henceforth, subject to the probationary period hereinafter provided for and to the provisions of the final order of adoption, the child will be, to all intents and purposes, the child of the petitioner. If the petition includes a prayer for a change of the child's name and the circuit court is satisfied that such change is in the best interests of the child, upon entry of final order, the name of the child shall be changed. An attested copy of every interlocutory order of adoption shall be forwarded forthwith by the clerk of the circuit court in which it was entered to the Commissioner and to the licensed or duly authorized child-placing agency or the local director that prepared the required home study or report.

If the circuit court denies the petition for adoption and if it appears to the circuit court that the child is without proper care, custody or guardianship, the circuit court may, in its discretion, appoint a guardian for the child or commit the child to a custodial agency as provided for in §§ 16.1-278.2, 16.1-278.3 and 31-5, respectively.

§ 63.2-1210. Probationary period and interlocutory order not required under certain circumstances.

The circuit court may omit the probationary period and the interlocutory order and enter a final order of adoption under the following circumstances:

1. If the child is legally the child by birth or adoption of one of the petitioners and if the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper.

2. After receipt of the report required by § 63.2-1208, if the child has been placed in the home of the petitioner by a child-placing agency and (i) the placing or supervising agency certifies to the circuit court that the child has lived in the home of the petitioner continuously for a period of at least six months immediately preceding the filing of the petition and has been visited by a representative of such agency at least three times within a six-month period, provided there are not less than ninety days between the first visit and the last visit, and (ii) the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper. The circuit court may, for good cause shown, in cases of placement by a child-placing agency, omit the requirement that the visits be made in the six months immediately preceding the filing of the petition, provided that such visits were made in some six-month period preceding the filing.

3. After receipt of the report, if the child has resided in the home of the petitioner continuously for at least three years immediately prior to the filing of the petition for adoption, and the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper.

4. When a child has been placed by the birth parent with the prospective adoptive parent who is the child's grandparent, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt and the circuit court has accepted the written consent of the birth parent in accordance with § 63.2-1202, and the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper. If the circuit court determines the need for an investigation prior to the final order of adoption, it shall refer the matter to the local director or a licensed child-placing agency for an investigation and report, which shall be completed within such time as the circuit court designates.

5. After receipt of the report, if the child has been legally adopted according to the laws of a foreign country with which the United States has diplomatic relations and if the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper, and the child (i) has resided in the home of the petitioners for at least one year immediately prior to the filing of the petition, or (ii) has resided in the home of the petitioners for at least six months immediately prior to the filing of the petition, has been visited by a representative of a child-placing agency or of the local department three times within such six-month period with no fewer than ninety days between the first and last visits, and the three visits have occurred within eight months immediately prior to the filing of the petition.

6. After receipt of the report, if the child was placed into Virginia from a foreign country in accordance with § 63.2-1104, and if the child has resided in the home of the petitioner for at least six months immediately prior to the filing of the petition and has been visited by a representative of a licensed child-placing agency or of the local department three times within the six-month period with no fewer than ninety days between the first and last visits, and the three visits have occurred within eight months immediately prior to the filing of the petition.

§ 63.2-1211. Revocation of interlocutory order.

The circuit court may, by order entered of record, revoke its interlocutory order of adoption at any time prior to the entry of the final order, for good cause shown, on its own motion, or on the motion of the birth parents of the child, or of the petitioner, or of the child himself by his next friend, or of the child-placing agency, which placed the child with the petitioners or of the Commissioner; but, no such order of revocation shall be entered, except on motion of the petitioner, unless the petitioner is given ten days' notice of such motion in writing and an opportunity to be heard or has removed from the

Commonwealth. The clerk of the circuit court shall forward an attested copy of every such order to the Commissioner and to the child-placing agency that placed the child.

When an interlocutory order has been entered and subsequently is revoked, the circuit court may proceed in the same manner as set forth in § 63.2-1209 to enter an order concerning the subsequent custody or guardianship of the child.

§ 63.2-1212. Visitations during probationary period and report.

A. Except as hereinafter provided, after the entry of an interlocutory order of adoption, (i) the licensed or duly authorized child-placing agency; (ii) if the child was not placed by an agency and the placement is not a parental placement, the local director; (iii) if the placement is a parental placement, the child-placing agency that submitted the home study; or, (iv) if the child was placed by an agency in another state or by an agency, court, or other entity in another country, the local director or licensed child-placing agency, whichever agency completed the home study or provided supervision, shall cause the child to be visited at least three times within a period of six months by an agent of such local board or local department or by an agent of such licensed or duly authorized child-placing agency. Whenever practicable, such visits shall be made within the six-month period immediately following the date of entry of the interlocutory order; however, no less than ninety days shall elapse between the first visit and the last visit. The agency that placed the child, the child-placing agency that submitted the home study, the local director or the licensed child-placing agency, as applicable, shall make a written report to the circuit court, in such form as the Commissioner may prescribe, of the findings made pursuant to such visitations. A copy of the report to the circuit court shall be furnished to the counsel of record for the parties, which copy shall be returned by such counsel as is required by § 63.2-1246 for the return of the original report. A copy of the report to the circuit court shall be served on the Commissioner by delivering or mailing a copy to him on or before the day of filing the report with the circuit court. On the report to the circuit court there shall be appended either acceptance of service or certification of the local director or the representative of the child-placing agency, that copies were served as this section requires, showing the date of delivery or mailing. The Commissioner may notify the circuit court within twenty-one days of the date of delivery or mailing of the report as shown by the agency, during which time the circuit court shall withhold consideration of the merits of the report pending review of the report by the Commissioner, of any disapproval thereof stating reasons for any further action on the report that he deems necessary.

B. The three supervisory visits required in subsection A shall be conducted in the presence of the child. At least one such visit shall be conducted in the home of the petitioners in the presence of the child and both petitioners, unless the petition was filed by a single parent or one of the petitioners is no longer residing in the home.

C. When it is determined for purposes of subsection B that the petitioner no longer resides in the adoptive home, the child-placing agency or local director shall contact the petitioner to determine whether or not the petitioner wishes to remain a party to the proceedings and shall include in its report to the circuit court the results of its findings.

§ 63.2-1213. Final order of adoption.

After the expiration of six months from the date upon which the interlocutory order is entered, and after considering the report made pursuant to § 63.2-1212, if the circuit court is satisfied that the best interests of the child will be served thereby, the circuit court shall enter the final order of adoption. However, a final order of adoption shall not be entered until information has been furnished by the petitioner in compliance with § 32.1-262 unless the circuit court, for good cause shown, finds the information to be unavailable or unnecessary. No circuit court shall deny a petitioner a final order of adoption for the sole reason that the child was placed in the adoptive home by a person not authorized to make such placements pursuant to § 63.2-1200. An attested copy of every final order of adoption shall be forwarded, by the clerk of the circuit court in which it was entered, to the Commissioner and to the child-placing agency that placed the child or to the local director, in cases where the child was not placed by an agency.

§ 63.2-1214. Annual review of pending petitions for adoption; duty of Commissioner and circuit court clerk.

After the expiration of twelve months from the date of the entry of the last order upon a petition for adoption, except when the last order entered is a final order of adoption, it shall be the responsibility of the Commissioner to notify the clerk of the circuit court of all adoption cases that have been pending for a period of more than twelve months, and the clerk of the circuit court shall place on the docket all such cases for review by the circuit court as soon as practicable.

§ 63.2-1215. Legal effects of adoption.

The birth parents, and the parents by previous adoption, if any, except where a final order of adoption is entered pursuant to § 63.2-1241, and any other person whose interest in the child derives from or through such parent or previous adoptive parent, including but not limited to grandparents,

stepparents, former stepparents, blood relatives and family members, other than any such parent who is the husband or wife of one of the petitioners, shall, by such final order of adoption, be divested of all legal rights and obligations in respect to the child including the right to petition any court for visitation with the child, but in all cases the child shall be free from all legal obligations of obedience and maintenance in respect to such persons. Any child adopted under the provisions of this chapter shall, from and after the entry of the interlocutory order or from and after the entry of the final order where no such interlocutory order is entered, be, to all intents and purposes, the child of the person or persons so adopting him, and, unless and until such interlocutory order or final order is subsequently revoked, shall be entitled to all the rights and privileges, and subject to all the obligations, of a child of such person or persons born in lawful wedlock. An adopted person is the child of an adopting parent, and as such, the adopting parent shall be entitled to testify in all cases civil and criminal, as if the adopted child was born of the adopting parent in lawful wedlock.

§ 63.2-1216. Final order not subject to attack after six months.

After the expiration of six months from the date of entry of any final order of adoption from which no appeal has been taken to the Court of Appeals, the validity thereof shall not be subject to attack in any proceedings, collateral or direct, for any reason, including but not limited to fraud, duress, failure to give any required notice, failure of any procedural requirement, or lack of jurisdiction over any person, and such order shall be final for all purposes.

§ 63.2-1217. Provision of false information; penalty.

Any person who knowingly and intentionally provides false information in writing and under oath, which is material to an adoptive placement shall be guilty of a Class 6 felony. The Commissioner is authorized to investigate such cases and may refer the case to the attorney for the Commonwealth for prosecution.

§ 63.2-1218. Certain exchange of property, advertisement, solicitation prohibited; penalty.

No person or child-placing agency shall charge, pay, give, or agree to give or accept any money, property, service or other thing of value in connection with a placement or adoption or any act undertaken pursuant to this chapter except (i) reasonable and customary services provided by a licensed or duly authorized child-placing agency and fees paid for such services; (ii) payment or reimbursement for medical expenses and insurance premiums that are directly related to the birth mother's pregnancy and hospitalization for the birth of the child who is the subject of the adoption proceedings, for mental health counseling received by the birth mother or birth father related to the adoption, and for expenses incurred for medical care for the child; (iii) payment or reimbursement for reasonable and necessary expenses for food, clothing, and shelter when, upon the written advice of her physician, the birth mother is unable to work or otherwise support herself due to medical reasons or complications associated with the pregnancy or birth of the child; (iv) payment or reimbursement for reasonable expenses incurred incidental to any required court appearance including, but not limited to, transportation, food and lodging; (v) usual and customary fees for legal services in adoption proceedings; and (vi) payment or reimbursement of reasonable expenses incurred for transportation in connection with any of the services specified in this section or intercountry placements as defined in § 63.2-100 and as necessary for compliance with state and federal law in such placements. No person shall advertise or solicit to perform any activity prohibited by this section. Any person violating the provisions of this section shall be guilty of a Class 6 felony. The Commissioner is authorized to investigate cases in which fees paid for legal services appear to be in excess of usual and customary fees in order to determine if there has been compliance with the provisions of this section.

§ 63.2-1219. Suspected violation of property exchange information.

If the juvenile and domestic relations or circuit court or any participating licensed or duly authorized child-placing agency suspects that there has been a violation of § 63.2-1218 in connection with a placement or adoption, it shall report such findings to the Commissioner for investigation and appropriate action. If the Commissioner suspects that a person has violated § 63.2-1218, he shall report his findings to the appropriate attorney for the Commonwealth. If the Commissioner believes that such violation has occurred in the course of the practice of a profession or occupation licensed or regulated pursuant to Title 54.1, he shall also report such findings to the appropriate regulatory authority for investigation and appropriate disciplinary action.

§ 63.2-1220. Birth certificate.

For the purpose of securing a new birth certificate for an adopted child, the procedures set forth in § 32.1-262 shall be followed.

Article 2.

Agency Adoptions.

§ 63.2-1221. Placement of children for adoption by agency or local board.

A licensed child-placing agency or local board may place for adoption, and is empowered to consent to the adoption of, any child who is properly committed or entrusted to its care, in accordance with the

provisions of §§ 63.2-900, 63.2-903, 63.2-1817 or this section, when the order of commitment or the entrustment agreement between the birth parent(s) and the agency or board provides for the termination of all parental rights and responsibilities with respect to the child for the purpose of placing and consenting to the adoption of such child.

The entrustment agreement shall divest the birth parent(s) of all legal rights and obligations with respect to the child, and the child shall be free from all legal obligations of obedience and maintenance with respect to them, provided that such rights and obligations may be restored to the birth parent(s) and the child by circuit court order prior to the entry of a final order of adoption upon proof of fraud or duress.

§ 63.2-1222. Execution of entrustment agreement by birth parent(s); exceptions; notice and objection to entrustment; copy required to be furnished.

For the purposes of this section, a birth parent who is less than eighteen years of age shall be deemed fully competent and shall have legal capacity to execute a valid entrustment agreement, including an agreement that provides for the termination of all parental rights and responsibilities, and shall be as fully bound thereby as if such birth parent had attained the age of eighteen years.

An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child born out of wedlock if the identity of the birth father is not reasonably ascertainable, or if such birth father is given notice of the entrustment by registered or certified mail to his last known address and fails to object to the entrustment within twenty-one days of the mailing of such notice. Such objection shall be in writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with the agency that mailed the notice of entrustment within the time period specified in § 63.2-1223. An affidavit of the birth mother that the identity of the birth father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence that would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the birth father is reasonably ascertainable. For purposes of determining whether the identity of the birth father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the birth mother and the birth father.

An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child when the birth father has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63 or subsection B of § 18.2-366, and the child was conceived as a result of such violation.

A copy of the entrustment agreement shall be furnished to all parties signing such agreement.

§ 63.2-1223. Revocation of entrustment agreement.

A valid entrustment agreement terminating all parental rights and responsibilities to the child shall be revocable by either of the birth parents until (i) the child has reached the age of twenty-five days and (ii) fifteen days have elapsed from the date of execution of the agreement. In addition, a valid entrustment agreement shall be revocable by either of the birth parents if the child has not been placed in the home of adoptive parents at the time of such revocation. Revocation of an entrustment agreement shall be in writing and signed by the revoking party. The written revocation shall be delivered to the child-placing agency or local board to which the child was originally entrusted. Delivery of the written revocation shall be made during the business day of the child-placing agency or local board to which the child was originally entrusted, in accordance with the applicable time period set out in this section. If the revocation period expires on a Saturday, Sunday, legal holiday or any day on which the agency or local board is officially closed, the revocation period shall be extended to the next day that is not a Saturday, Sunday, legal holiday or other day on which the agency or local board is officially closed. Upon revocation of the entrustment agreement, the child shall be returned to the parent revoking the agreement.

§ 63.2-1224. Counseling of birth parents required.

Prior to the placement of a child for adoption, the licensed child-placing agency or local board having custody of the child shall counsel the birth mother or, if reasonably available, both birth parents, concerning the disposition of their child.

§ 63.2-1225. Determination of appropriate home.

In determining the appropriate home in which to place a child for adoption, a married couple or an unmarried individual shall be eligible to receive placement of a child for purposes of adoption. In addition, the agency or board may consider the recommendations of a physician or attorney licensed in the Commonwealth, or a clergyman who is familiar with the situation of the prospective adoptive parents or the child. The physician, attorney or clergyman shall not charge any fee for recommending such a placement to a board or agency and shall not advertise that he is available to make such recommendations.

§ 63.2-1226. Parental placement sections apply if birth parents designate adoptive parents.

When a licensed child-placing agency or a local board accepts custody of a child for the purpose of placing the child with adoptive parents designated by the birth parents or a person other than a licensed child-placing agency or local board, the parental provisions of this chapter shall apply to such placement.

§ 63.2-1227. Filing of petition for agency adoption.

A petition for the adoption of a child placed in the home of the petitioners by a child-placing agency shall be filed in the name by which the child will be known after adoption, provided the name is followed by the registration number of the child's original birth certificate and the state or country in which the registration occurred unless it is verified by the registrar of vital statistics of the state or country of birth that such information is not available. The report of investigation required by § 63.2-1208 and, when applicable, the report required by § 63.2-1212 shall be identified with the child's name as it appears on the birth certificate, the birth registration number and the name by which the child is to be known after the final order of adoption is entered.

A single petition for adoption under the provisions of this section shall be sufficient for the concurrent adoption by the same petitioners of two or more children who have the same birth parent or parents, and nothing in this section shall be construed as having heretofore required a separate petition for each of such children.

§ 63.2-1228. Forwarding of petition.

Upon the filing of the petition, the circuit court shall forward a copy of the petition and all exhibits thereto to the Commissioner and to the agency that placed the child. In cases where the child was placed by an agency in another state, or by an agency, court, or other entity in another country, the petition and all exhibits shall be forwarded to the local director or licensed child-placing agency, whichever agency completed the home study or provided supervision. If no Virginia agency provided such services, the petition and all exhibits shall be forwarded to the local director of the locality where the petitioners reside or resided at the time of filing the petition, or had legal residence at the time of the filing of the petition.

§ 63.2-1229. Foster parent adoption.

When a foster parent who has a child placed in the foster parents' home by a licensed or duly authorized child-placing agency desires to adopt the child and (i) the child has resided in the home of such foster parent continuously for at least eighteen months and (ii) the birth parents' rights to the child have been terminated, the circuit court shall accept the petition filed by the foster parent and shall order a thorough investigation of the matter to be made pursuant to § 63.2-1208. The circuit court may refer the matter for investigation to a licensed or duly authorized child-placing agency other than the agency holding custody of the child. Upon completion of the investigation and report and filing of the consent of the agency holding custody of the child, or upon the finding contemplated by subsection C of § 63.2-1202, the circuit court may enter a final order of adoption waiving visitation requirements, if the circuit court determines that the adoption is in the best interests of the child.

Article 3.

Parental Placement Adoptions.

§ 63.2-1230. Placement of children by parent or guardian.

The birth parent or legal guardian of a child may place his child for adoption directly with the adoptive parents of his choice. Consent to the proposed adoption shall be executed upon compliance with the provisions of this chapter before a juvenile and domestic relations district court or, if the birth parent or legal guardian does not reside in Virginia, before a court having jurisdiction over child custody matters in the jurisdiction where the birth parent or legal guardian resides when requested by a juvenile and domestic relations district court of this Commonwealth, pursuant to § 20-146.11. Consent proceedings shall be advanced on the juvenile and domestic relations district court docket so as to be heard by the court within ten days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

§ 63.2-1231. Home study; simultaneous meeting required; exception.

Prior to the consent hearing in the juvenile and domestic relations district court, a home study of the adoptive parent(s) shall be completed by a licensed or duly authorized child-placing agency in accordance with regulations adopted by the Board. The home study shall make inquiry as to (i) whether the prospective adoptive parents are financially able, morally suitable, and in satisfactory physical and mental health to enable them to care for the child; (ii) the physical and mental condition of the child, if known; (iii) the circumstances under which the child came to live, or will be living, in the home of the prospective adoptive family, as applicable; (iv) what fees have been paid by the prospective adoptive family or in their behalf in the placement and adoption of the child; (v) whether the requirements of subdivisions A 1, A 2, A 3 and A 5 of § 63.2-1232 have been met; and (vi) any other matters specified by the circuit court. In the course of the home study, the agency social worker shall meet at least once with the birth parent(s) and prospective adoptive parents simultaneously. When the child has been

placed with prospective adoptive parents who are related to the child as specified in subdivision 6 of § 63.2-1233, this meeting is not required.

§ 63.2-1232. Requirements of a parental placement adoption.

A. The juvenile and domestic relations district court shall not accept consent until it determines that:

1. The birth parent(s) are aware of alternatives to adoption, adoption procedures, and opportunities for placement with other adoptive families, and that the birth parents' consent is informed and uncoerced.

2. A licensed or duly authorized child-placing agency has counseled the prospective adoptive parents with regard to alternatives to adoption, adoption procedures, including the need to address the parental rights of birth parents, the procedures for terminating such rights, and opportunities for adoption of other children; that the prospective adoptive parents' decision is informed and uncoerced; and that they intend to file an adoption petition and proceed toward a final order of adoption.

3. The birth parent(s) and adoptive parents have exchanged identifying information including but not limited to full names, addresses, physical, mental, social and psychological information and any other information necessary to promote the welfare of the child.

4. Any financial agreement or exchange of property among the parties and any fees charged or paid for services related to the placement or adoption of the child have been disclosed to the court and that all parties understand that no binding contract regarding placement or adoption of the child exists.

5. There has been no violation of the provisions of § 63.2-1218 in connection with the placement; however, if it appears there has been such violation, the court shall not reject consent of the birth parent to the adoption for that reason alone but shall report the alleged violation as required by § 63.2-1219.

6. A licensed or duly authorized child-placing agency has conducted a home study of the prospective adoptive home in accordance with regulations established by the Board and has provided to the court a report of such home study, which shall contain the agency's recommendation regarding the suitability of the placement. A married couple or an unmarried individual shall be eligible to receive placement of a child for adoption.

7. The birth parent(s) have been informed of their opportunity to be represented by legal counsel.

B. The juvenile and domestic relations district court shall not accept the consent if the requirements of subsection A have not been met. In such cases, it shall refer the birth parent to a licensed or duly authorized child-placing agency for investigation and recommendation in accordance with §§ 63.2-1208 and 63.2-1238. If the juvenile and domestic relations district court determines that any of the parties is financially unable to obtain the required services, it shall refer the matter to the local director.

§ 63.2-1233. Consent to be executed in juvenile and domestic relations district court; exceptions.

When the juvenile and domestic relations district court is satisfied that all requirements of § 63.2-1232 have been met with respect to at least one birth parent and the adoptive child is at least ten days old, that birth parent or both birth parents, as the case may be, shall execute consent to the proposed adoption in compliance with the provisions of § 63.2-1202 while before the juvenile and domestic relations district court in person and in the presence of the prospective adoptive parents. The juvenile and domestic relations district court shall accept the consent of the birth parent(s) and transfer custody of the child to the prospective adoptive parents, pending notification to any nonconsenting birth parent, as described hereinafter.

1. a. The execution of consent before the juvenile and domestic relations district court shall not be required of a birth father who is not married to the mother of the child at the time of the child's conception or birth if (i) the birth father consents under oath and in writing to the adoption; (ii) the birth mother swears under oath and in writing that the identity of the birth father is not reasonably ascertainable; (iii) the identity of the birth father is ascertainable and his whereabouts are known, he is given notice of the proceedings by registered or certified mail to his last known address and he fails to object to the proceeding within twenty-one days of the mailing of such notice. Such objection shall be in writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with the clerk of the juvenile and domestic relations district court in which the petition was filed during the business day of the court, within the time period specified in this section. Failure of the objecting party to appear at the consent hearing, either in person or by counsel, shall constitute a waiver of such objection; or (iv) the putative birth father named by the birth mother denies under oath and in writing paternity of the child. An affidavit of the birth mother that the identity of the birth father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the juvenile and domestic relations district court that would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the birth father is reasonably ascertainable. For purposes of determining whether the identity of the birth father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the birth mother and the birth father.

b. The juvenile and domestic relations district court may accept the written consent of the birth father who is not married to the birth mother of the child at the time of the child's conception or birth, provided that the identifying information required in § 63.2-1232 is filed in writing with the juvenile and domestic relations district court of jurisdiction. Such consent shall be executed after the birth of the child, shall advise the birth father of his opportunity for legal representation, and shall be presented to the juvenile and domestic relations district court for acceptance. The consent may waive further notice of the adoption proceedings and shall contain the name, address and telephone number of the birth father's legal counsel or an acknowledgment that he was informed of his opportunity to be represented by legal counsel and declined such representation.

c. In the event that the birth mother's consent is not executed in the juvenile and domestic relations district court, the consent of the birth father who is not married to the birth mother of the child shall be executed in the juvenile and domestic relations district court.

d. A child born to a married birth mother shall be presumed to be the child of her husband and his consent shall be required. This presumption may be rebutted by sufficient evidence, satisfactory to the juvenile and domestic relations district court, which would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child, in which case the husband's consent shall not be required.

2. A birth parent whose consent is required as set forth in § 63.2-1202, whose identity is known and who neither consents before the juvenile and domestic relations district court as described above, nor executes a written consent to the adoption or a denial of paternity out of court as provided above, shall be given notice, including the date and location of the hearing, of the proceedings pending before the juvenile and domestic relations district court and be given the opportunity to appear before the juvenile and domestic relations district court. Such hearing may occur subsequent to the proceeding wherein the consenting birth parent appeared but may not be held until twenty-one days after personal service of notice on the nonconsenting birth parent, or if personal service is unobtainable, ten days after the completion of the execution of an order of publication against such birth parent. The juvenile and domestic relations district court may appoint counsel for the birth parent(s). If the juvenile and domestic relations district court finds that consent is withheld contrary to the best interests of the child, as set forth in § 63.2-1205, or is unobtainable, it may grant the petition without such consent and enter an order waiving the requirement of consent of the nonconsenting birth parent and transferring custody of the child to the prospective adoptive parents, which order shall become effective fifteen days thereafter. If the juvenile and domestic relations district court denies the petition, the juvenile and domestic relations district court shall order that any consent given for the purpose of such placement shall be void and, if necessary, the court shall determine custody of the child as between the birth parents.

3. Except as provided in subdivision 4, if consent cannot be obtained from at least one birth parent, the juvenile and domestic relations district court shall deny the petition and determine custody of the child pursuant to § 16.1-278.2.

4. If the child was placed by the birth parent(s) with the prospective adoptive parents and if both birth parents have failed, without good cause, to appear at a hearing to execute consent under this section for which they were given proper notice pursuant to § 16.1-264, the juvenile and domestic relations district court may grant the petition without the consent of either birth parent and enter an order waiving consent and transferring custody of the child to the prospective adoptive parents, which order shall become effective fifteen days thereafter. Prior to the entry of such an order, the juvenile and domestic relations district court may appoint legal counsel for the birth parents and shall find by clear and convincing evidence (i) that the birth parents were given proper notice of the hearing(s) to execute consent and of the hearing to proceed without their consent; (ii) that the birth parents failed to show good cause for their failure to appear at such hearing(s); and (iii) that pursuant to § 63.2-1205, the consent of the birth parents is withheld contrary to the best interests of the child or is unobtainable.

5. If both birth parents are deceased, the juvenile and domestic relations district court, after hearing evidence to that effect, may grant the petition without the filing of any consent.

6. When a child has been placed by the birth parent(s) with prospective adoptive parents who are the child's grandparents, adult brother or sister, adult uncle or aunt or adult great uncle or great aunt, consent does not have to be executed in the juvenile and domestic relations district court in the presence of the prospective adoptive parents. The juvenile and domestic relations district court may accept written consent that has been signed and acknowledged before an officer authorized by law to take acknowledgments. No hearing shall be required for the court's acceptance of such consent.

When such child has resided in the home of the prospective adoptive parent(s) continuously for three or more years, this section shall not apply, and consent shall be executed in accordance with subsection E of § 63.2-1202.

7. No consent shall be required from the birth father of a child placed pursuant to this section when

such father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63 or subsection B of § 18.2-366, and the child was conceived as a result of such violation, nor shall the birth father be entitled to notice of any of the proceedings under this section.

8. The juvenile and domestic relations district court shall review each order entered under this section at least annually until such time as the final order of adoption is entered.

§ 63.2-1234. When consent is revocable.

Consent shall be revocable as follows:

1. By either consenting birth parent for any reason for up to fifteen days from its execution.

a. Such revocation shall be in writing, signed by the revoking party or counsel of record for the revoking party and shall be filed with the clerk of the juvenile and domestic relations district court in which the petition was filed during the business day of the juvenile and domestic relations district court, within the time period specified in this section. If the revocation period expires on a Saturday, Sunday, legal holiday or any day on which the clerk's office is closed as authorized by statute, the revocation period shall be extended to the next day that is not a Saturday, Sunday, legal holiday or other day on which the clerk's office is closed as authorized by statute.

b. Upon the filing of a valid revocation within the time period set out in this section, the juvenile and domestic relations district court shall order that any consent given for the purpose of such placement is void and, if necessary, the juvenile and domestic relations district court shall determine custody of the child as between the birth parents.

2. By any party prior to the final order of adoption (i) upon proof of fraud or duress or (ii) after placement of the child in an adoptive home, upon written, mutual consent of the birth parents and prospective adoptive parents.

§ 63.2-1235. Adoptive home not in child's best interests.

If the juvenile and domestic relations district court determines from the information provided to it that placement in the prospective adoptive home will be contrary to the best interests of the child, it shall so inform the birth parents. If the birth parents choose not to retain custody of the child nor to designate other prospective adoptive parents, or if the birth parents' whereabouts are not reasonably ascertainable, the juvenile and domestic relations district court shall determine custody of the child.

§ 63.2-1236. Duty of Department to disseminate information.

The Department shall develop and disseminate information to the public regarding the provisions of parental placement adoptions, including the desirability of initiating the procedures required by § 63.2-1232 as early in the placement and adoption process as possible to ensure that birth parents are aware of the provisions of this law and begin required procedures in a timely manner.

§ 63.2-1237. Petition for parental placement adoption; jurisdiction; contents.

Proceedings for the parental placement adoption of a minor child and for a change of name of such child shall be instituted only by petition to the circuit court in the county or city in which the petitioner resides. Such petition may be filed by any natural person who resides in the Commonwealth for leave to adopt a minor child not legally his by birth and, if it is so desired by the petitioner, also to change the name of such child. In the case of married persons, the petition shall be the joint petition of the husband and wife but, in the event the child to be adopted is legally the child by birth or adoption of one of the petitioners, such petitioner shall unite in the petition for the purpose of indicating his or her consent to the prayer thereof only. The petition shall contain a full disclosure of the circumstances under which the child came to live, and is living, in the home of the petitioner. Each petition for adoption shall be signed by the petitioner as well as by counsel of record, if any. In any case in which the petition seeks the entry of an adoption order without referral for investigation, the petition shall be under oath.

The petition shall state that the findings required by § 63.2-1232 have been made and shall be accompanied by appropriate documentation supporting such statement, to include copies of documents executing consent and transferring custody of the child to the prospective adoptive parents, and a copy of the report required by § 63.2-1231. The court shall not waive any of the requirements of this paragraph nor any of the requirements of § 63.2-1232.

A single petition for adoption under the provisions of this section shall be sufficient for the concurrent adoption by the same petitioners of two or more children who have the same birth parent or parents; and nothing in this section shall be construed as having heretofore required a separate petition for each of such children.

§ 63.2-1238. Forwarding of petition; when investigation and report not required.

A. Upon the filing of the petition, the circuit court shall forward a copy of the petition and all exhibits thereto to the Commissioner and to the local director where the petitioners reside or resided at the time of filing the petition, or had legal residence at the time of the filing of the petition. However, in cases where a licensed child-placing agency has completed a home study, the petition and all exhibits shall be forwarded to the licensed child-placing agency.

B. In parental placement adoptions where consent has been properly executed, no investigation and report pursuant to § 63.2-1208 is required. However, the circuit court may order a thorough investigation of the matter and report in which case the provisions of § 63.2-1208 shall apply.

§ 63.2-1239. Return of copies furnished to counsel.

Any copy of the report required by § 63.2-1208 to be furnished to counsel of record representing the adopting parent or parents shall, upon the entry of a final order of adoption, or other final disposition of the matter, be returned by such counsel, without having been duplicated, to the clerk of the circuit court in which final disposition of the matter is had, to be disposed of as is required by § 63.2-1246 for the return of the original report.

§ 63.2-1240. Court issuing order deemed sending agency under Interstate Compact on Placement of Children.

When a petitioner moves outside the Commonwealth after the entry of an interlocutory order of adoption but prior to the entry of a final order of adoption and the child was not placed by a child-placing agency, the circuit court issuing the interlocutory order shall be deemed the sending agency for the purposes of the Interstate Compact on the Placement of Children authorized pursuant to the provisions of § 63.2-1000.

Article 4.

Stepparent Adoption.

§ 63.2-1241. Adoption of child by new spouse of birth or adoptive parent.

A. When the spouse of a birth parent of a child born in wedlock or the spouse of a parent by adoption of the child has died, and the surviving birth parent or parent by adoption marries again and the new spouse desires to adopt the child, on a petition filed by the surviving birth parent or parent by adoption and new spouse for the adoption and change of name of the child, the circuit court may proceed to order the proposed adoption or change of name without referring the matter to the local director.

B. When a birth parent of a legitimate infant or a parent by adoption is divorced and marries again and the birth parent or parent by adoption desires the new spouse to adopt the child, on a petition filed by the birth parent or parent by adoption and the new spouse for the adoption and change of name of the child, the circuit court may proceed to order the proposed adoption or change of name without referring the matter to the local director if the other birth parent or parent by adoption consents in writing to the adoption or change of name or if the other birth parent or parent by adoption is deceased.

C. When the custodial birth parent of a child born to parents who were not married to each other at the time of the child's conception or birth marries and the new spouse of such custodial birth parent desires to adopt such child, on a petition filed by the custodial birth parent and spouse for the adoption and change of name of the child, the circuit court may proceed to order the proposed adoption and change of name without referring the matter to the local director if (i) the noncustodial birth parent consents, under oath, in writing to the adoption, or (ii) the mother swears, under oath, in writing, that the identity of the father is not reasonably ascertainable, or (iii) the putative father named by the mother denies paternity of the child, or (iv) the child is fourteen years of age or older and has lived in the home of the person desiring to adopt the child for at least five years, or (v) the noncustodial birth parent is deceased.

D. When a single person who has adopted a child thereafter marries and desires his spouse to adopt the child, on a petition filed by the adoptive parent and the spouse for the adoption and change of name of the child, the circuit court may proceed to order the proposed adoption or change of name without referring the matter to the local director.

§ 63.2-1242. Investigation and report at discretion of circuit court.

For adoptions under this article, an investigation and report shall be undertaken only if the circuit court in its discretion determines that there should be an investigation before a final order of adoption is entered. If the circuit court makes such a determination, it shall refer the matter to the local director for an investigation and report to be completed within such time as the circuit court designates. If an investigation is ordered, the circuit court shall forward a copy of the petition and all exhibits thereto to the local director and the provisions of § 63.2-1208 shall apply.

Article 5.

Adult Adoption.

§ 63.2-1243. Adoption of certain persons eighteen years of age or over.

A petition may be filed in circuit court by any natural person who is a resident of this Commonwealth (i) for the adoption of a stepchild eighteen years of age or over to whom he has stood in loco parentis for a period of at least three months; (ii) for the adoption of a niece or nephew over eighteen years of age who has no living parents and who has lived in the home of the petitioner for at least three months; (iii) for the adoption of any person eighteen years of age or over who is the birth

child of the petitioner or who had resided in the home of the petitioner for a period of at least three months prior to becoming eighteen years of age; or (iv) for the adoption of any person eighteen years of age or older, for good cause shown, provided that the person to be adopted is at least fifteen years younger than the petitioner and the petitioner and the person to be adopted have known each other for at least five years prior to the filing of the petition for adoption, and provided further that both the petitioner and the person to be adopted have been residents of the Commonwealth for at least two years immediately prior to the filing of the petition. Proceedings in any such case shall conform as near as may be to proceedings for the adoption of a minor child under this chapter except that:

(a) No consent of either parent shall be required; and

(b) The consent of the person to be adopted shall be required in all cases.

Any interlocutory or final order issued in any case under this section shall have the same effect as other orders issued under this chapter; and in any such case the word "child" in any other section of this chapter shall be construed to refer to the person whose adoption is petitioned for under this section. The entry of a final order of adoption pursuant to this section which incorporates a change of name shall be deemed to meet the requirements of § 8.01-217.

The provisions of this section shall apply to any person who would have been eligible for adoption hereunder prior to July 1, 1972.

§ 63.2-1244. Investigation and report at discretion of circuit court; exception.

For adoptions under this article, an investigation and report shall not be made unless the circuit court in its discretion so requires. However, if a petition is filed for the adoption of any person eighteen years of age or older under clause (iv) of § 63.2-1243, the circuit court shall require an investigation and report to be made. If an investigation is required, the circuit court shall forward a copy of the petition and all exhibits to the local director and the provisions of § 63.2-1208 shall apply.

Article 6.

Records.

§ 63.2-1245. Separate order book, file and index of adoption cases; to whom available; permanent retention.

Each circuit court clerk shall establish and maintain a separate and exclusive order book, file and index of adoption cases, none of which shall be exposed to public view but which shall be made available by such clerk to attorneys of record, social service officials, court officials, and to such other persons as the circuit court shall direct in specific cases by order of the circuit court entered in accordance with § 63.2-1246.

Such records shall be retained permanently in original form or on microfilm. Such microfilm and microphotographic process and equipment shall meet state archival standards and such microfilm shall be available for examination to those persons listed above. The clerk shall further provide security negative microfilm copies of such records for storage in the Archives and Records Division of The Library of Virginia.

§ 63.2-1246. Disposition of reports; disclosure of information as to identity of birth family.

Upon the entry of a final order of adoption or other final disposition of the matter, the clerk of the circuit court in which it was entered shall forthwith transmit to the Commissioner all reports made in connection with the case, and the Commissioner shall preserve such reports and all other collateral reports, information and recommendations in a separate file. Except as provided in subsections C, D and E of § 63.2-1247, nonidentifying information from such adoption file shall not be open to inspection, or be copied, by anyone other than the adopted person, if eighteen years of age or over, or licensed or authorized child-placing agencies providing services to the child or the adoptive parents, except upon the order of a circuit court entered upon good cause shown. However, if the adoptive parents, or either of them, is living, the adopted person shall not be permitted to inspect the home study of the adoptive parents unless the Commissioner first obtains written permission to do so from such adoptive parent or parents.

No identifying information from such adoption file shall be disclosed, open to inspection or made available to be copied except as provided in subsections A, B and E of § 63.2-1247 or upon application of the adopted person, if eighteen years of age or over, to the Commissioner, who shall designate the person or agency that made the investigation to attempt to locate and advise the birth family of the application. The designated person or agency shall report the results of the attempt to locate and advise the birth family to the Commissioner, including the relative effects that disclosure of the identifying information may have on the adopted person, the adoptive parents, and the birth family. The adopted person and the birth family may submit to the Commissioner, and the Commissioner shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party. Upon a showing of good cause, the Commissioner shall disclose the identifying information. If the Commissioner fails to designate a person or agency to attempt to locate the birth family within thirty days of receipt of the application, or if the Commissioner denies disclosure of the

identifying information after receiving the designated person's or agency's report, the adopted person may apply to the circuit court for an order to disclose such information. Such order shall be entered only upon good cause shown after notice to and opportunity for hearing by the applicant for such order and the person or agency that made the investigation. "Good cause" when used in this section shall mean a showing of a compelling and necessitous need for the identifying information.

An eligible adoptee who is a resident of Virginia may apply for the court order provided for herein to (i) the circuit court of the county or city where the adoptee resides or (ii) the circuit court of the county or city where the central office of the Department is located. An eligible adoptee who is not a resident of Virginia shall apply for such a court order to the circuit court of the county or city where the central office of the Department is located.

If the identity and whereabouts of the adoptive parents and the birth parents are known to the person or agency, the circuit court may require the person or agency to advise the adoptive parents and the birth parents of the pendency of the application for such order. In determining good cause for the disclosure of such information, the circuit court shall consider the relative effects of such action upon the adopted person, the adoptive parents and the birth parents. The adopted person and the birth family may submit to the circuit court, and the circuit court shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party.

When consent of the birth parents is not obtainable, due to the death of the birth parents or mental incapacity of the birth parents, the circuit court may release identifying information to the adult adopted person. In making this decision, the circuit court shall consider the needs and concerns of the adopted person and the birth family if such information is available, the actions the agency took to locate the birth family, the information in the agency's report and the recommendation of the agency.

The Commissioner, person or agency may charge a reasonable fee to cover the costs of processing requests for nonidentifying information.

Upon entry of a final order of adoption or other final disposition of a matter involving the placement of a child by a licensed child-placing agency or a local board or an investigation by the local director of a placement for adoption of a child, the agency or local board shall transmit to the Commissioner all reports and collateral information in connection with the case, which shall be preserved by the Commissioner in accordance with this section.

§ 63.2-1247. Disclosure to birth family; adoptive parents; medical, etc., information; exchange of information; open records in parental placement adoptions.

A. Where the adoption is finalized on or after July 1, 1994, and the adopted person is twenty-one years of age or over, the adopted person's birth parents and adult birth siblings may apply to the Commissioner for the disclosure of identifying information from the adoption file. The Commissioner shall designate the person or agency that made the investigation to attempt to locate and advise the adopted person of the application. The designated person or agency shall report the results of the attempt to locate and advise the adopted person to the Commissioner, including the relative effects that disclosure of the identifying information may have on the adopted person, the adoptive parents, and the birth family. The adopted person and the birth family may submit to the Commissioner, and the Commissioner shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party. Upon a showing of good cause, the Commissioner shall disclose the identifying information. If the Commissioner fails to designate a person or agency to attempt to locate the adopted person within thirty days of receipt of the application, or if the Commissioner denies disclosure of the identifying information after receiving the designated person's or agency's report, the birth parents or adult birth siblings, whoever applied, may apply to the circuit court for an order to disclose such information. Such order shall be entered only upon good cause shown after notice to and opportunity for hearing by the applicant for such order and the person or agency that made the investigation. "Good cause" when used in this section shall mean a showing of a compelling and necessitous need for the identifying information.

A birth parent or adult birth sibling who is a resident of Virginia may apply for the court order provided for herein to (i) the circuit court of the county or city where the birth parent or adult birth sibling resides or (ii) the circuit court of the county or city where the central office of the Department is located. A birth parent or adult birth sibling who is not a resident of Virginia shall apply for such a court order to the circuit court of the county or city where the central office of the Department is located.

If the identity and whereabouts of the adopted person and adoptive parents are known to the person or agency, the circuit court may require the person or agency to advise the adopted person and adoptive parents of the pendency of the application for such order. In determining good cause for the disclosure of such information, the circuit court shall consider the relative effects of such action upon the adopted person, the adoptive parents and the birth family. The adopted person and the birth family may submit to the circuit court, and the circuit court shall consider, written comments stating the

anticipated effect that the disclosure of identifying information may have upon any party.

When consent of the adopted person is not obtainable, due to the death or mental incapacity of the adopted person, the circuit court may release identifying information to the birth parents or adult birth siblings. In making this decision, the circuit court shall consider the needs and concerns of the birth parents or adult birth siblings and the adoptive family if such information is available, the actions the agency took to locate the adopted person, the information in the agency's report and the recommendation of the agency.

B. Where the adoption is finalized on or after July 1, 1994, and the adopted person is under eighteen years of age, the adoptive parents or other legal custodian of the child may apply to the Commissioner for the disclosure of identifying information about the birth family. The Commissioner shall designate the person or agency that made the investigation to attempt to locate and advise the birth family of the application. The designated person or agency shall report the results of the attempt to locate and advise the birth family to the Commissioner, including the relative effects that disclosure of the identifying information may have on the adopted person, the adoptive parents or other legal custodian, and the birth family. The adoptive parents, legal custodian and birth family may submit to the Commissioner, and the Commissioner shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party. Upon a showing of good cause, the Commissioner shall disclose the identifying information. If the Commissioner fails to designate a person or agency to attempt to locate the birth family within thirty days of receipt of the application, or if the Commissioner denies disclosure of the identifying information after receiving the designated person's or agency's report, the adoptive parents or legal custodian, whoever applied, may apply to the circuit court for an order to disclose such information. Such order shall be entered only upon good cause shown after notice to and opportunity for hearing by the applicant for such order and the person or agency that made the investigation. "Good cause" when used in this section shall mean a showing of a compelling and necessitous need for the identifying information.

An adoptive parent or legal custodian who is a resident of Virginia may apply for the court order provided for herein to (i) the circuit court of the county or city where the adoptive parent or legal custodian resides or (ii) the circuit court of the county or city where the central office of the Department is located. An adoptive parent or legal custodian who is not a resident of Virginia shall apply for such a court order to the circuit court of the county or city where the central office of the Department is located.

If the identity and whereabouts of the birth parents are known to the person or agency, the circuit court may require the person or agency to advise the birth parents of the pendency of the application for such order. In determining good cause for the disclosure of such information, the circuit court shall consider the relative effects of such action upon the adopted person, the adoptive parents or legal custodian and the birth parents. The birth family may submit to the circuit court, and the circuit court shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party.

When consent of the birth family is not obtainable, due to the death of the birth parents or mental incapacity of the birth parents, the circuit court may release identifying information to the adoptive parents or legal custodian. In making this decision, the circuit court shall consider the needs and concerns of the adoptive parents or legal custodian and the birth family if such information is available, the actions the agency took to locate the birth family, the information in the agency's report and the recommendation of the agency.

C. In any case where a physician or licensed mental health provider submits a written statement, in response to a request from the adult adoptee, adoptive parent, birth parent or adult birth siblings, indicating that it is critical that medical, psychological or genetic information be conveyed, and states clearly the reasons why this is necessary, the agency that made the investigation shall make an attempt to inform the adult adoptee, adoptive parents, birth parents or adult birth siblings, whichever is applicable, of the information. The Commissioner shall provide information from the adoption record to the searching agency if necessary to facilitate the search. Confidentiality of all parties shall be maintained by the agency.

D. In cases where at least one of the adoptive parents and one of the birth parents agree in writing to allow the agency involved in the adoption to exchange nonidentifying information and pictures, the agency may exchange this information with such adoptive parents and birth parents when the whereabouts of the adoptive parents and birth parents is known or readily accessible. Such agreement may be entered into or withdrawn by either party at any time or may be withdrawn by the adult adoptee.

E. In parental placement adoptions, where the consent to the adoption was executed on or after July 1, 1994, the entire adoption record shall be open to the adoptive parents, the adoptee who is eighteen years of age or older, and a birth parent who executed a written consent to the adoption.

§ 63.2-1248. Fees for home studies, investigations, visitations and reports.

Notwithstanding the provisions of § 17.1-275, the circuit court with jurisdiction over any adoption matter, or the person, agency, or child-placing agency that attempts to locate the birth family pursuant to § 63.2-1246 or subsection B of § 63.2-1247, or that attempts to locate the adult adoptee pursuant to subsection A of § 63.2-1247, shall assess a fee against the petitioner, or applicant and, in the case of local departments, shall assess such fee in accordance with regulations and fee schedules established by the Board, for home studies, investigations, visits and reports provided by the appropriate local department, person, or agency pursuant to §§ 20-160, 63.2-1208, 63.2-1212, 63.2-1231, 63.2-1238 or § 63.2-1246. The Board shall adopt regulations and fee schedules, which shall include (i) standards for determining the petitioner's or applicant's ability to pay and (ii) a scale of fees based on the petitioner's or applicant's income and family size and the actual cost of the services provided. The fee charged shall not exceed the actual cost of the service. The fee shall be paid to the appropriate local department, person, or agency and a receipt therefor shall be provided to the circuit court, or to the Commissioner if pursuant to § 63.2-1246 or § 63.2-1247, prior to the acceptance of parental consent, entry of any final order, or release of identifying information by the Commissioner, and no court shall accept parental consent or enter any final order and the Commissioner shall not release any identifying information until proof of payment of such fees has been received.

CHAPTER 13.

ADOPTION ASSISTANCE FOR CHILDREN WITH SPECIAL NEEDS.

§ 63.2-1300. Purpose and intent of adoption assistance.

The purpose of adoption assistance is to facilitate adoptive placements and ensure permanency for children with special needs. Adoption assistance includes subsidy payments made pursuant to requirements set forth in this chapter. A child with special needs is any child (i) in the custody of a local board that has the authority to place the child for adoption and consent thereto in accordance with the provisions of §§ 63.2-900, 63.2-903 and 63.2-1105 or (ii) in the custody of a licensed child-placing agency, for whom it has been determined that it is unlikely that the child will be adopted within a reasonable period of time due to one or more factors including, but not limited to:

1. Physical, mental or emotional condition existing prior to adoption;

2. Hereditary tendency, congenital problem or birth injury leading to substantial risk of future disability; or

3. Individual circumstances of the child related to age, racial or ethnic background or close relationship with one or more siblings.

Child with special needs shall also include a child for whom the factors set out in subdivision 1 or 2 are present at the time of adoption but are not diagnosed until after the final order of adoption is entered and no more than one year has elapsed.

§ 63.2-1301. Subsidy payments; when adoptive parents, etc., eligible.

Subsidy payments shall be made to the adoptive parents and other persons on behalf of a child in the custody of the local board or in the custody of a licensed child-placing agency and placed for adoption, pursuant to this chapter, if it is determined that:

1. The child is a child with special needs; and

2. The adoptive parents are capable of providing the permanent family relationships needed by the child in all respects except financial.

Such subsidy payments shall be made, however, only after a reasonable but unsuccessful effort has been made to place the child with appropriate adoptive parents without the provision of adoption assistance pursuant to this chapter except in cases where the child has developed significant emotional ties with the prospective adoptive parents while in the care of such parents as a foster child.

§ 63.2-1302. Subsidy payments; maintenance; special needs; payment agreements; continuation of payments when adoptive parents move to another jurisdiction; funds.

A. Subsidy payments shall include:

1. A maintenance subsidy that shall be payable monthly to provide for the support and care of the child; however, the maintenance subsidy shall not exceed the maximum regular foster care payment that would otherwise be made for the child; and

2. A special need subsidy to provide special services to the child that the adoptive parents cannot afford and that are not covered by insurance or otherwise, including, but not limited to:

a. Medical, surgical and dental care;

b. Hospitalization;

c. Legal services in effecting adoption;

d. Individual remedial educational services;

e. Psychological and psychiatric treatment;

f. Speech and physical therapy;

g. Special services, equipment, treatment and training for physical and mental handicaps; and

h. Cost of adoptive home study and placement by a child-placing agency other than the local board.

Special need subsidies may be paid to the vendor of the goods or services directly or through the adoptive parents.

Subsidy payments shall cease when the child with special needs reaches the age of eighteen years. If it is determined that the child has a mental or physical handicap, or an educational delay resulting from such handicap, warranting the continuation of assistance, subsidy payments may be made until the child reaches the age of twenty-one years.

B. Maintenance subsidy payments and special need subsidy payments shall be made on the basis of an adoption assistance agreement entered into by the local board and the adoptive parents or, in cases in which the child is in the custody of a licensed child-placing agency, an agreement between the local board, the licensed child-placing agency and the adoptive parents.

Prior to entering into an adoption assistance agreement, the local board or licensed child-placing agency shall ensure that adoptive parents have received information about their child's eligibility for subsidy; about their child's special needs and, to the extent possible, the current and potential impact of those special needs. The local board or licensed child-placing agency shall also ensure that adoptive parents receive information about the process for appeal in the event of a disagreement between the adoptive parent and the local board or the adoptive parent and the child-placing agency and information about the procedures for revising the adoption assistance agreement.

Adoptive parents shall submit annually to the local board within thirty days of the anniversary date of the approved agreement an affidavit which certifies that (i) the child on whose behalf they are receiving subsidy payments remains in their care, (ii) the child's condition requiring subsidy continues to exist, and (iii) whether or not changes to the adoption assistance agreement are requested. Failure to provide this information may be grounds for suspension of the subsidy payment until such time as the information is provided.

Maintenance subsidy payments made pursuant to this section shall not be reduced unless the circumstances of the child or adoptive parents have changed significantly in relation to the terms of the subsidy agreement.

C. Responsibility for subsidy payments for a child placed for adoption shall be continued by the local board that initiated the agreement in the event that the adoptive parents live in or move to another jurisdiction, provided that the adoptive parents meet the conditions of the agreement and provided that an agreement can be made with the appropriate agency of the locality within or without the Commonwealth where the adoptive family lives or is moving to provide the necessary assistance in administering the subsidy agreement.

D. Payments may be made under this chapter from appropriations for foster care services for the maintenance and medical or other services for children who have special needs in accordance with § 63.2-1301. Within the limitations of the appropriations to the Department, the Commissioner shall reimburse any agency making payments under this chapter. Any such agency may seek and accept funds from other sources, including federal, state, local, and private sources, to carry out the purposes of this chapter.

§ 63.2-1303. Qualification for subsidy payments.

Qualification for subsidy payments shall be determined by the local board or by the licensed child-placing agency, whichever has custody of the child, in accordance with regulations adopted by the Board.

CHAPTER 14.

UNIFORM ACT ON ADOPTION AND MEDICAL ASSISTANCE.

§ 63.2-1400. Findings and purposes.

A. The legislature finds that locating adoptive families for children for whom state assistance is desirable pursuant to the Virginia State Adoption Assistance Law, and ensuring the protection of the interests of the children affected during the entire assistance period, require special measures when the adoptive parents move to other states or are residents of another state. Provision of medical and other necessary services for children, with state assistance, encounters special difficulties when the provision of services takes place in other states.

B. The purposes of this Act are to authorize the Governor to enter into interstate agreements with agencies of other states for the protection of children on behalf of whom adoption assistance is being provided by the Department and to provide procedures for interstate children's adoption assistance payments, including medical payments.

§ 63.2-1401. Compacts authorized.

The Governor is authorized to develop, participate in the development of, negotiate and enter into one or more interstate compacts on behalf of this Commonwealth with other states to implement one or more of the purposes set forth in this chapter. When so entered into, and for so long as it remains in force, the compact shall have the force and effect of law.

§ 63.2-1402. Definitions.

For the purposes of this chapter:

"Adoption assistance state" means the state that is signatory to an adoption assistance agreement in a particular case.

"Residence state" means the state of which the child is a resident by virtue of the residence of the adoptive parents.

"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States.

§ 63.2-1403. Contents of compacts.

A. A compact entered into pursuant to the authority conferred by this chapter shall have the following content:

1. A provision making it available for joinder by all states.

2. A provision or provisions for withdrawal from the compact upon written notice to the parties, but with a period of one year between the date of the notice and the effective date of the withdrawal.

3. A requirement that the protections afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who, on the effective date of the withdrawal, are receiving adoption assistance from a party state other than the one in which they are resident and have their principal place of abode.

4. A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parents and the child welfare agency of the state which undertakes to provide the adoption assistance, and further, that any such agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents and the state agency providing the adoption assistance.

5. Such other provisions as may be appropriate to implement the proper administration of the compact.

B. A compact entered into pursuant to the authority conferred by this chapter may contain the following provisions in addition to those required pursuant to subsection A:

1. Provisions establishing procedures and entitlements to medical, developmental, child care or other social services for the child in accordance with applicable laws, even though the child and the adoptive parents are in a state other than the one responsible for or providing the services or the funds to defray part or all of the costs thereof.

2. Such other provisions as may be appropriate or incidental to the proper administration of the compact.

§ 63.2-1404. Medical assistance.

A. A child with special needs resident in this Commonwealth who is the subject of an adoption assistance agreement with another state shall be entitled to receive a medical assistance identification from this Commonwealth upon the filing in the Department of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with regulations of the Department, the adoptive parents shall be required at least annually to show that the agreement is still in force or has been renewed.

B. The Department of Medical Assistance Services shall consider the holder of medical assistance identification pursuant to this section as any other holder of a medical assistance identification under the laws of this Commonwealth and shall process and make payment on claims on account of such holder in the same manner and pursuant to the same conditions and procedures as for other recipients of medical assistance.

C. The Department shall provide coverage and benefits not provided by the state plan for medical assistance in the residence state for a child who is in another state and who is covered by an adoption assistance agreement made in Virginia to the extent required by the agreement. However, there shall be no reimbursement for services or benefit amounts covered under any insurance or other third party medical contract or arrangement held by the child or the adoptive parents. The Department of Medical Assistance Services shall adopt regulations implementing this subsection. The additional coverages and benefit amounts provided pursuant to this subsection shall be for services for which there is no federal financial contribution or which, if federally aided, are not provided by the residence state. Such regulations shall include procedures to be followed in obtaining prior approvals for services when such approval is required for the assistance.

D. The submission of any claim for payment or reimbursement for services or benefits pursuant to this section or the making of any statement in connection therewith, which claim or statement the maker knows or should know to be false, misleading or fraudulent shall be punishable as perjury and shall also be subject to a fine of not more than $10,000, or imprisonment for not more than two years, or both.

E. The provisions of this section shall apply only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this Commonwealth under which the other state provides medical assistance to children with special needs under adoption assistance agreements made by this Commonwealth. All other children entitled to medical assistance pursuant to adoption assistance agreements entered into by this Commonwealth shall be eligible to receive it in accordance with the laws and procedures applicable thereto.

§ 63.2-1405. Federal participation.

Consistent with federal law, the Department and the Department of Medical Assistance Services, in connection with the administration of this chapter and any compact pursuant hereto, shall include in any state plan made pursuant to the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272), Titles IV (e) and XIX of the Social Security Act, as amended, and any other applicable federal laws, the provision of adoption assistance and medical assistance for which the federal government pays some or all of the costs. The Departments shall apply for and administer all relevant federal aid in accordance with law.

CHAPTER 15.
CHILD ABUSE AND NEGLECT.
Article 1.
General Provisions.

§ 63.2-1500. Policy of the Commonwealth.

The General Assembly declares that it is the policy of this Commonwealth to require reports of suspected child abuse and neglect for the purpose of identifying children who are being abused or neglected, of assuring that protective services will be made available to an abused or neglected child in order to protect such a child and his siblings and to prevent further abuse or neglect, and of preserving the family life of the parents and children, where possible, by enhancing parental capacity for adequate child care.

§ 63.2-1501. Definitions.

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

"Court" means the juvenile and domestic relations district court of the county or city.

"Prevention" means efforts that (i) promote health and competence in people and (ii) create, promote and strengthen environments that nurture people in their development.

§ 63.2-1502. Establishment of Child-Protective Services Unit; duties.

There is created a Child-Protective Services Unit in the Department that shall have the following powers and duties:

1. To evaluate and strengthen all local, regional and state programs dealing with child abuse and neglect.

2. To assume primary responsibility for directing the planning and funding of child-protective services. This shall include reviewing and approving the annual proposed plans and budgets for protective services submitted by the local departments.

3. To assist in developing programs aimed at discovering and preventing the many factors causing child abuse and neglect.

4. To prepare and disseminate, including the presentation of, educational programs and materials on child abuse and neglect.

5. To provide educational programs for professionals required by law to make reports under this chapter.

6. To establish standards of training and provide educational programs to qualify workers in the field of child-protective services.

7. To establish standards of training and educational programs to qualify workers to determine whether complaints of abuse or neglect of a child in a private or state-operated hospital, institution or other facility, or public school, are founded.

8. To maintain staff qualified pursuant to Board regulations to assist local department personnel in determining whether an employee of a private or state-operated hospital, institution or other facility or an employee of a school board, abused or neglected a child in such hospital, institution, or other facility, or public school.

9. To monitor the processing and determination of cases where an employee of a private or state-operated hospital, institution or other facility, or an employee of a school board, is suspected of abusing or neglecting a child in such hospital, institution, or other facility, or public school.

10. To help coordinate child-protective services at the state, regional, and local levels with the efforts of other state and voluntary social, medical and legal agencies.

11. To maintain a child abuse and neglect information system that includes all cases of child abuse and neglect within the Commonwealth.

12. To provide for methods to preserve the confidentiality of all records in order to protect the rights

of the child, and his parents or guardians.

§ 63.2-1503. Local departments to establish child-protective services; duties.

A. Each local department shall establish child-protective services under a departmental coordinator within such department or with one or more adjacent local departments that shall be staffed with qualified personnel pursuant to regulations adopted by the Board. The local department shall be the public agency responsible for receiving and responding to complaints and reports, except that (i) in cases where the reports or complaints are to be made to the court and the judge determines that no local department within a reasonable geographic distance can impartially respond to the report, the court shall assign the report to the court services unit for evaluation; and (ii) in cases where an employee at a private or state-operated hospital, institution or other facility, or an employee of a school board is suspected of abusing or neglecting a child in such hospital, institution or other facility, or public school, the local department shall request the Department and the relevant private or state-operated hospital, institution or other facility, or school board to assist in conducting a joint investigation in accordance with regulations adopted by the Board, in consultation with the Departments of Education, Health, Medical Assistance Services, Mental Health, Mental Retardation and Substance Abuse Services, Juvenile Justice and Corrections.

B. The local department shall ensure, through its own personnel or through cooperative arrangements with other local agencies, the capability of receiving reports or complaints and responding to them promptly on a twenty-four-hours-a-day, seven-days-per-week basis.

C. The local department shall widely publicize a telephone number for receiving complaints and reports.

D. The local department shall upon receipt of a complaint, report immediately to the attorney for the Commonwealth and the local law-enforcement agency and make available to them the records of the local department when abuse or neglect is suspected in any case involving (i) death of a child; (ii) injury or threatened injury to the child in which a felony or Class 1 misdemeanor is also suspected; (iii) any sexual abuse, suspected sexual abuse or other sexual offense involving a child, including but not limited to the use or display of the child in sexually explicit visual material, as defined in § 18.2-374.1; (iv) any abduction of a child; (v) any felony or Class 1 misdemeanor drug offense involving a child; or (vi) contributing to the delinquency of a minor in violation of § 18.2-371, and provide the attorney for the Commonwealth and the local law-enforcement agency with records of any complaints of abuse or neglect involving the victim or the alleged perpetrator. The local department shall not allow reports of the death of the victim from other local agencies to substitute for direct reports to the attorney for the Commonwealth and the local law-enforcement agency.

E. When abuse or neglect is suspected in any case involving the death of a child, the local department shall report the case immediately to the regional medical examiner and the local law-enforcement agency.

F. The local department shall use reasonable diligence to locate (i) any child for whom a report of suspected abuse or neglect has been received and is under investigation, receiving family assessment, or for whom a founded determination of abuse and neglect has been made and a child-protective services case opened and (ii) persons who are the subject of a report that is under investigation or receiving family assessment, if the whereabouts of the child or such persons are unknown to the local department.

G. When an abused or neglected child and the persons who are the subject of an open child-protective services case have relocated out of the jurisdiction of the local department, the local department shall notify the child-protective services agency in the jurisdiction to which such persons have relocated, whether inside or outside of the Commonwealth, and forward to such agency relevant portions of the case record. The receiving local department shall arrange protective and rehabilitative services as required by this section.

H. When a child for whom a report of suspected abuse or neglect has been received and is under investigation or receiving family assessment and the child and the child's parents or other persons responsible for the child's care who are the subject of the report that is under investigation or family assessment have relocated out of the jurisdiction of the local department, the local department shall notify the child-protective services agency in the jurisdiction to which the child and such persons have relocated, whether inside or outside of the Commonwealth, and complete such investigation or family assessment by requesting such agency's assistance in completing the investigation or family assessment. The local department that completes the investigation or family assessment shall forward to the receiving agency relevant portions of the case record in order for the receiving agency to arrange protective and rehabilitative services as required by this section.

I. Upon receipt of a report of child abuse or neglect, the local department shall determine the validity of such report and shall make a determination to conduct an investigation pursuant to § 63.2-1505 or, if designated as a child-protective services differential response agency by the Department according to § 63.2-1504, a family assessment pursuant to § 63.2-1506.

J. The local department shall foster, when practicable, the creation, maintenance and coordination of hospital and community-based multi-disciplinary teams that shall include where possible, but not be limited to, members of the medical, mental health, social work, nursing, education, legal and law-enforcement professions. Such teams shall assist the local departments in identifying abused and neglected children; coordinating medical, social, and legal services for the children and their families; developing innovative programs for detection and prevention of child abuse; promoting community concern and action in the area of child abuse and neglect; and disseminating information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat child abuse and neglect. These teams may be the family assessment and planning teams established pursuant to § 2.2-5207. Multi-disciplinary teams may develop agreements regarding the exchange of information among the parties for the purposes of the investigation and disposition of complaints of child abuse and neglect, delivery of services, and child protection. Any information exchanged in accordance with the agreement shall not be considered to be a violation of the provisions of §§ 63.2-102, 63.2-104 or § 63.2-105.

The local department shall also coordinate its efforts in the provision of these services for abused and neglected children with the judge and staff of the court.

K. The local department shall develop, where practical, memoranda of understanding for responding to reports of child abuse and neglect with local law enforcement and the attorney for the Commonwealth.

L. The local department shall report annually on its activities concerning abused and neglected children to the court and to the Child-Protective Services Unit in the Department on forms provided by the Department.

M. Statements, or any evidence derived therefrom, made to local department child-protective services personnel, or to any person performing the duties of such personnel, by any person accused of the abuse, injury, neglect or death of a child after the arrest of such person, shall not be used in evidence in the case-in-chief against such person in the criminal proceeding on the question of guilt or innocence over the objection of the accused, unless the statement was made after such person was fully advised (i) of his right to remain silent, (ii) that anything he says may be used against him in a court of law, (iii) that he has a right to the presence of an attorney during any interviews, and (iv) that if he cannot afford an attorney, one will be appointed for him prior to any questioning.

N. Notwithstanding any other provision of law, the local department, in accordance with Board regulations, shall transmit information regarding founded complaints or family assessments and may transmit other information regarding reports, complaints, family assessments and investigations involving active duty military personnel or members of their household to family advocacy representatives of the United States Armed Forces.

§ 63.2-1504. Child-protective services differential response system.

The Department shall implement a child-protective services differential response system in all local departments. The differential response system allows local departments to respond to valid reports or complaints of child abuse or neglect by conducting either an investigation or a family assessment. The Department shall publish a plan to implement the child-protective services differential response system in local departments by July 1, 2000, and complete implementation in all local departments by July 1, 2003. The Department shall develop a training program for all staff persons involved in the differential response system, and all such staff shall receive this training.

§ 63.2-1505. Investigations by local departments.

A. An investigation requires the collection of information necessary to determine:

1. The immediate safety needs of the child;

2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;

3. Risk of future harm to the child;

4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services;

5. Whether abuse or neglect has occurred;

6. If abuse or neglect has occurred, who abused or neglected the child; and

7. A finding of either founded or unfounded based on the facts collected during the investigation.

B. If the local department responds to the report or complaint by conducting an investigation, the local department shall:

1. Make immediate investigation and, if the report or complaint was based upon one of the factors specified in subsection B of § 63.2-1509, the local department may file a petition pursuant to § 16.1-241.3;

2. Complete a report and transmit it forthwith to the Department, except that no such report shall be transmitted in cases in which the cause to suspect abuse or neglect is one of the factors specified in

subsection B of § 63.2-1509 and the mother sought substance abuse counseling or treatment prior to the child's birth;

3. Consult with the family to arrange for necessary protective and rehabilitative services to be provided to the child and his family;

4. Petition the court for services deemed necessary including, but not limited to, removal of the child or his siblings from their home;

5. Determine within forty-five days if a report of abuse or neglect is founded or unfounded and transmit a report to such effect to the Department and to the person who is the subject of the investigation. However, upon written justification by the local department, such determination may be extended, not to exceed a total of sixty days. If through the exercise of reasonable diligence the local department is unable to find the child who is the subject of the report, the time the child cannot be found shall not be computed as part of the forty-five-day or sixty-day period and documentation of such reasonable diligence shall be placed in the record; and

6. If a report of abuse or neglect is unfounded, transmit a report to such effect to the complainant and parent or guardian and the person responsible for the care of the child in those cases where such person was suspected of abuse or neglect.

§ 63.2-1506. Family assessments by local departments.

A. A family assessment requires the collection of information necessary to determine:

1. The immediate safety needs of the child;

2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;

3. Risk of future harm to the child; and

4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services.

B. When a local department has been designated as a child-protective services differential response system participant by the Department pursuant to § 63.2-1504 and responds to the report or complaint by conducting a family assessment, the local department shall:

1. Conduct an immediate family assessment and, if the report or complaint was based upon one of the factors specified in subsection B of § 63.2-1509, the local department may file a petition pursuant to § 16.1-241.3;

2. Immediately contact the subject of the report and the family of the child alleged to have been abused or neglected and give each a written explanation of the family assessment procedure. The family assessment shall be in writing and shall be completed in accordance with Board regulation;

3. Complete the family assessment within forty-five days and transmit a report to such effect to the Department and to the person who is the subject of the family assessment. However, upon written justification by the local department, the family assessment may be extended, not to exceed a total of sixty days;

4. Consult with the family to arrange for necessary protective and rehabilitative services to be provided to the child and his family;

5. Petition the court for services deemed necessary including, but not limited to, removal of the child or his siblings from their home;

6. Make no disposition of founded or unfounded for reports in which a family assessment is completed; and

7. Commence an immediate investigation, if at any time during the completion of the family assessment, the local department determines that an investigation is required.

C. When a local department has been designated as a child-protective services differential response agency by the Department, the local department may investigate any report of child abuse or neglect, but the following valid reports of child abuse or neglect shall be investigated: (i) sexual abuse, (ii) child fatality, (iii) abuse or neglect resulting in serious injury as defined in § 18.2-371.1, (iv) child has been taken into the custody of the local department, or (v) cases involving a caretaker at a state-licensed child day center, religiously exempt child day center, licensed, registered or approved family day home, private or public school, hospital or any institution.

§ 63.2-1507. Cooperation by state entities.

All law-enforcement departments and other state and local departments, agencies, authorities and institutions shall cooperate with each child-protective services coordinator of a local department and any multi-discipline teams in the detection and prevention of child abuse.

Article 2.

Complaints.

§ 63.2-1508. Valid report or complaint.

A valid report or complaint means the local department has evaluated the information and allegations of the report or complaint and determined that the local department shall conduct an

investigation or family assessment because the following elements are present:

1. The alleged victim child or children are under the age of eighteen at the time of the complaint or report;

2. The alleged abuser is the alleged victim child's parent or other caretaker;

3. The local department receiving the complaint or report has jurisdiction; and

4. The circumstances described allege suspected child abuse or neglect.

Nothing in this section shall relieve any person specified in § 63.2-1509 from making a report required by that section, regardless of the identity of the person suspected to have caused such abuse or neglect.

§ 63.2-1509. Physicians, nurses, teachers, etc., to report certain injuries to children; penalty for failure to report.

A. The following persons who, in their professional or official capacity, have reason to suspect that a child is an abused or neglected child, shall report the matter immediately to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred or to the Department's toll-free child abuse and neglect hotline:

1. Any person licensed to practice medicine or any of the healing arts;

2. Any hospital resident or intern, and any person employed in the nursing profession;

3. Any person employed as a social worker;

4. Any probation officer;

5. Any teacher or other person employed in a public or private school, kindergarten or nursery school;

6. Any person providing full-time or part-time child care for pay on a regularly planned basis;

7. Any duly accredited Christian Science practitioner;

8. Any mental health professional;

9. Any law-enforcement officer;

10. Any mediator eligible to receive court referrals pursuant to § 8.01-576.8;

11. Any professional staff person, not previously enumerated, employed by a private or state-operated hospital, institution or facility to which children have been committed or where children have been placed for care and treatment;

12. Any person associated with or employed by any private organization responsible for the care, custody or control of children; and

13. Any person who is designated a court-appointed special advocate pursuant to Article 5 (§ 9.1-151 et seq.) of Chapter 1 of Title 9.1.

If neither the locality in which the child resides nor where the abuse or neglect is believed to have occurred is known, then such report shall be made to the local department of the county or city where the abuse or neglect was discovered or to the Department's toll-free child abuse and neglect hotline.

If an employee of the local department is suspected of abusing or neglecting a child, the report shall be made to the court of the county or city where the abuse or neglect was discovered. Upon receipt of such a report by the court, the judge shall assign the report to a local department that is not the employer of the suspected employee for investigation or family assessment. The judge may consult with the Department in selecting a local department to respond to the report or the complaint.

If the information is received by a teacher, staff member, resident, intern or nurse in the course of professional services in a hospital, school or similar institution, such person may, in place of said report, immediately notify the person in charge of the institution or department, or his designee, who shall make such report forthwith.

The initial report may be an oral report but such report shall be reduced to writing by the child abuse coordinator of the local department on a form prescribed by the Board. The person required to make the report shall disclose all information that is the basis for his suspicion of abuse or neglect of the child and, upon request, shall make available to the child-protective services coordinator and the local department, which is the agency of jurisdiction, any records or reports that document the basis for the report.

B. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall include (i) a finding made by an attending physician within seven days of a child's birth that the results of a blood or urine test conducted within forty-eight hours of the birth of the child indicate the presence of a controlled substance not prescribed for the mother by a physician; (ii) a finding by an attending physician made within forty-eight hours of a child's birth that the child was born dependent on a controlled substance which was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms; (iii) a diagnosis by an attending physician made within seven days of a child's birth that the child has an illness, disease or condition which, to a reasonable degree of medical certainty, is attributable to in utero exposure to a controlled substance which was not prescribed by a physician for the mother or the child; or (iv) a diagnosis by an attending physician made within seven

days of a child's birth that the child has fetal alcohol syndrome attributable to in utero exposure to alcohol. When "reason to suspect" is based upon this subsection, such fact shall be included in the report along with the facts relied upon by the person making the report.

C. Any person required to file a report pursuant to this section who fails to do so within seventy-two hours of his first suspicion of child abuse or neglect shall be fined not more than $500 for the first failure and for any subsequent failures not less than $100 nor more than $1,000.

§ 63.2-1510. Complaints by others of certain injuries to children.

Any person who suspects that a child is an abused or neglected child may make a complaint concerning such child, except as hereinafter provided, to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred or to the Department's toll-free child abuse and neglect hotline. If an employee of the local department is suspected of abusing or neglecting a child, the complaint shall be made to the court of the county or city where the abuse or neglect was discovered. Upon receipt of such a report by the court, the judge shall assign the report to a local department that is not the employer of the suspected employee for investigation or family assessment; or, if the judge believes that no local department in a reasonable geographic distance can be impartial in responding to the reported case, the judge shall assign the report to the court service unit of his court for evaluation. The judge may consult with the Department in selecting a local department to respond to the report or complaint. Such a complaint may be oral or in writing and shall disclose all information which is the basis for the suspicion of abuse or neglect of the child.

§ 63.2-1511. Complaints of abuse and neglect against school personnel.

A. If a teacher, principal or other person employed by a local school board or employed in a school operated by the Commonwealth is suspected of abusing or neglecting a child in the course of his educational employment, the complaint shall be investigated in accordance with §§ 63.2-1503 and 63.2-1505. Pursuant to § 22.1-279.1, no teacher, principal or other person employed by a school board or employed in a school operated by the Commonwealth shall subject a student to corporal punishment. However, this prohibition of corporal punishment shall not be deemed to prevent (i) the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) the use of reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) the use of reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) the use of reasonable and necessary force for self-defense or the defense of others; or (v) the use of reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or paraphernalia that are upon the person of the student or within his control. In determining whether the actions of a teacher, principal or other person employed by a school board or employed in a school operated by the Commonwealth are within the exceptions provided in this section, the local department shall examine whether the actions at the time of the event that were made by such person were reasonable.

B. For purposes of this section, "corporal punishment" or "abused or neglected child" shall not include physical pain, injury or discomfort caused by the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control as permitted in clause (i) of subsection A or the use of reasonable and necessary force as permitted by clauses (ii), (iii), (iv), and (v) of subsection A, or by participation in practice or competition in an interscholastic sport, or participation in physical education or an extracurricular activity.

§ 63.2-1512. Immunity of person making report, etc., from liability.

Any person making a report pursuant to § 63.2-1509, a complaint pursuant to § 63.2-1510, or who takes a child into custody pursuant to § 63.2-1517, or who participates in a judicial proceeding resulting therefrom shall be immune from any civil or criminal liability in connection therewith, unless it is proven that such person acted in bad faith or with malicious intent.

§ 63.2-1513. Knowingly making false reports; penalties.

A. Any person fourteen years of age or older who makes or causes to be made a report of child abuse or neglect pursuant to this chapter that he knows to be false shall be guilty of a Class 1 misdemeanor. Any person fourteen years of age or older who has been previously convicted under this subsection and who is subsequently convicted under this subsection shall be guilty of a Class 6 felony.

B. The child-protective services records regarding the person who was alleged to have committed abuse or neglect that result from a report for which a conviction is obtained under this section shall be purged immediately by any custodian of such records upon presentation to the custodian of a certified copy of such conviction. After purging the records, the custodian shall notify the person in writing that such records have been purged.

Article 3.

Records.

§ 63.2-1514. Retention of records in all reports; procedures regarding unfounded reports alleged to be made in bad faith or with malicious intent.

A. The local department shall retain the records of all reports or complaints made pursuant to this chapter, in accordance with regulations adopted by the Board.

B. The Department shall maintain a child abuse and neglect information system that includes a central registry of founded complaints, pursuant to § 63.2-1515. The Department shall maintain all (i) unfounded investigations, (ii) family assessments, and (iii) reports or complaints determined to be not valid in a record which is separate from the central registry and accessible only to the Department and to local departments for child-protective services. The purpose of retaining these complaints or reports is to provide local departments with information regarding prior complaints or reports. In no event shall the mere existence of a prior complaint or report be used to determine that a subsequent complaint or report is founded. The subject of the complaint or report is the person who is alleged to have committed abuse or neglect. The subject of the complaint or report shall have access to his own record. The record of unfounded investigations, family assessments, and complaints and reports determined to be not valid shall be purged one year after the date of the complaint or report if there are no subsequent complaints or reports regarding the same child or the person who is the subject of the complaint or report in that one year. The local department shall retain the records for an additional period of up to two years if requested in writing by the person who is the subject of such complaint or report. The child-protective services records regarding the petitioner which result from such complaint or report shall be purged immediately by any custodian of such records upon presentation to the custodian of a certified copy of a court order that there has been a civil action which determined that the complaint or report was made in bad faith or with malicious intent. After purging the records, the custodian shall notify the petitioner in writing that the records have been purged.

C. At the time the local department notifies a person who is the subject of a complaint or report made pursuant to this chapter that such complaint or report is either an unfounded investigation or a completed family assessment, it shall notify him that the record will be retained for one year and of the availability of the procedures set out in this section regarding reports or complaints alleged to be made in bad faith or with malicious intent.

D. Any person who is the subject of an unfounded report or complaint made pursuant to this chapter who believes that such report or complaint was made in bad faith or with malicious intent may petition the circuit court in the jurisdiction in which the report or complaint was made for the release to such person of the records of the investigation or family assessment. Such petition shall specifically set forth the reasons such person believes that such report or complaint was made in bad faith or with malicious intent. Upon the filing of such petition, the circuit court shall request and the local department shall provide to the circuit court its records of the investigation or family assessment for the circuit court's in camera review. The petitioner shall be entitled to present evidence to support his petition. If the circuit court determines that there is a reasonable question of fact as to whether the report or complaint was made in bad faith or with malicious intent and that disclosure of the identity of the complainant would not be likely to endanger the life or safety of the complainant, it shall provide to the petitioner a copy of the records of the investigation or family assessment. The original records shall be subject to discovery in any subsequent civil action regarding the making of a complaint or report in bad faith or with malicious intent.

§ 63.2-1515. Central registry; disclosure of information.

The central registry shall contain such information as shall be prescribed by Board regulation; however, when the founded case of abuse or neglect does not name the parents or guardians of the child as the abuser or neglector, and the abuse or neglect occurred in a licensed or unlicensed child day center, a licensed, registered or approved family day home, a private or public school, or a children's residential facility, the child's name shall not be entered on the registry without consultation with and permission of the parents or guardians. If a child's name currently appears on the registry without consultation with and permission of the parents or guardians for a founded case of abuse and neglect that does not name the parents or guardians of the child as the abuser or neglector, such parents or guardians may have the child's name removed by written request to the Department. The information contained in the central registry shall not be open to inspection by the public. However, appropriate disclosure may be made in accordance with Board regulations.

The Department shall respond to requests for a search of the central registry made by (i) local departments and (ii) local school boards regarding applicants for employment, pursuant to § 22.1-296.4, in cases where there is no match within the central registry within ten business days of receipt of such requests. In cases where there is a match within the central registry regarding applicants for employment, the Department shall respond to requests made by local departments and local school boards within thirty business days of receipt of such requests. The response may be by first-class mail or facsimile transmission.

Any central registry check of a person who has applied to be a volunteer with a Virginia affiliate of Big Brothers/Big Sisters of America, volunteer fire company or volunteer rescue squad, or with a court-appointed special advocate program pursuant to § 9.1-153 shall be conducted at no charge.

Article 4.

Procedures.

§ 63.2-1516. Tape recording child abuse investigations.

Any person who is suspected of abuse or neglect of a child and who is the subject of an investigation or family assessment pursuant to this chapter may tape record any communications between him and child-protective services personnel that take place during the course of such investigation or family assessment, provided all parties to the conversation are aware the conversation is to be recorded. The parties' knowledge of the recording shall be demonstrated by a declaration at the beginning of the recorded portion of the conversation that the recording is to be made. If a person who is suspected of abuse or neglect of a child and who is the subject of an investigation or family assessment pursuant to this chapter elects to make a tape recording as provided in this section, the child-protective services personnel may also make such a recording.

§ 63.2-1517. Authority to take child into custody.

A. A physician or child-protective services worker of a local department or law-enforcement official investigating a report or complaint of abuse and neglect may take a child into custody for up to seventy-two hours without prior approval of parents or guardians provided:

1. The circumstances of the child are such that continuing in his place of residence or in the care or custody of the parent, guardian, custodian or other person responsible for the child's care, presents an imminent danger to the child's life or health to the extent that severe or irremediable injury would be likely to result or if evidence of abuse is perishable or subject to deterioration before a hearing can be held;

2. A court order is not immediately obtainable;

3. The court has set up procedures for placing such children;

4. Following taking the child into custody, the parents or guardians are notified as soon as practicable that he is in custody;

5. A report is made to the local department; and

6. The court is notified and the person or agency taking custody of such child obtains, as soon as possible, but in no event later than seventy-two hours, an emergency removal order pursuant to § 16.1-251; however, if a preliminary removal order is issued after a hearing held in accordance with § 16.1-252 within seventy-two hours of the removal of the child, an emergency removal order shall not be necessary.

B. If the seventy-two-hour period for holding a child in custody and for obtaining a preliminary or emergency removal order expires on a Saturday, Sunday, or legal holiday or day on which the court is lawfully closed, the seventy-two hours shall be extended to the next day that is not a Saturday, Sunday, or legal holiday or day on which the court is lawfully closed.

§ 63.2-1518. Authority to talk to child or sibling.

Any person required to make a report or conduct an investigation or family assessment, pursuant to this chapter may talk to any child suspected of being abused or neglected or to any of his siblings without consent of and outside the presence of his parent, guardian, legal custodian, or other person standing in loco parentis, or school personnel.

§ 63.2-1519. Physician-patient and husband-wife privileges inapplicable.

In any legal proceeding resulting from the filing of any report or complaint pursuant to this chapter, the physician-patient and husband-wife privileges shall not apply.

§ 63.2-1520. Photographs and X-rays of child; use as evidence.

In any case of suspected child abuse, photographs and X-rays of the child may be taken without the consent of the parent or other person responsible for such child as a part of the medical evaluation. Photographs of the child may also be taken without the consent of the parent or other person responsible for such child as a part of the investigation or family assessment of the case by the local department or the court; however, such photographs shall not be used in lieu of medical evaluation. Such photographs and X-rays may be introduced into evidence in any subsequent proceeding.

The court receiving such evidence may impose such restrictions as to the confidentiality of photographs of any minor as it deems appropriate.

§ 63.2-1521. Testimony by child using two-way closed-circuit television.

A. In any civil proceeding involving alleged abuse or neglect of a child pursuant to this chapter or pursuant to §§ 16.1-241, 16.1-251, 16.1-252, 16.1-253, 16.1-283 or § 20-107.2, the child's attorney or guardian ad litem or, if the child has been committed to the custody of a local department, the attorney for the local department may apply for an order from the court that the testimony of the alleged victim or of a child witness be taken in a room outside the courtroom and be televised by two-way

closed-circuit television. The person seeking such order shall apply for the order at least seven days before the trial date.

B. The provisions of this section shall apply to the following:

1. An alleged victim who was fourteen years of age or under on the date of the alleged offense and is sixteen or under at the time of the trial; and

2. Any child witness who is fourteen years of age or under at the time of the trial.

C. The court may order that the testimony of the child be taken by closed-circuit television as provided in subsections A and B if it finds that the child is unavailable to testify in open court in the presence of the defendant, the jury, the judge, and the public, for any of the following reasons:

1. The child's persistent refusal to testify despite judicial requests to do so;

2. The child's substantial inability to communicate about the offense; or

3. The substantial likelihood, based upon expert opinion testimony, that the child will suffer severe emotional trauma from so testifying.

Any ruling on the child's unavailability under this subsection shall be supported by the court with findings on the record or with written findings in a court not of record.

D. In any proceeding in which closed-circuit television is used to receive testimony, the attorney for the child and the defendant's attorney and, if the child has been committed to the custody of a local board, the attorney for the local board shall be present in the room with the child, and the child shall be subject to direct and cross examination. The only other persons allowed to be present in the room with the child during his testimony shall be the guardian ad litem, those persons necessary to operate the closed-circuit equipment, and any other person whose presence is determined by the court to be necessary to the welfare and well-being of the child.

E. The child's testimony shall be transmitted by closed-circuit television into the courtroom for the defendant, jury, judge and public to view. The defendant shall be provided with a means of private, contemporaneous communication with his attorney during the testimony.

§ 63.2-1522. Admission of evidence of sexual acts with children.

A. In any civil proceeding involving alleged abuse or neglect of a child pursuant to this chapter or pursuant to §§ 16.1-241, 16.1-251, 16.1-252, 16.1-253, 16.1-283 or § 20-107.2, an out-of-court statement made by a child the age of twelve or under at the time the statement is offered into evidence, describing any act of a sexual nature performed with or on the child by another, not otherwise admissible by statute or rule, may be admissible in evidence if the requirements of subsection B are met.

B. An out-of-court statement may be admitted into evidence as provided in subsection A if:

1. The child testifies at the proceeding, or testifies by means of a videotaped deposition or closed-circuit television, and at the time of such testimony is subject to cross examination concerning the out-of-court statement or the child is found by the court to be unavailable to testify on any of these grounds:

a. The child's death;

b. The child's absence from the jurisdiction, provided such absence is not for the purpose of preventing the availability of the child to testify;

c. The child's total failure of memory;

d. The child's physical or mental disability;

e. The existence of a privilege involving the child;

f. The child's incompetency, including the child's inability to communicate about the offense because of fear or a similar reason; and

g. The substantial likelihood, based upon expert opinion testimony, that the child would suffer severe emotional trauma from testifying at the proceeding or by means of a videotaped deposition or closed-circuit television.

2. The child's out-of-court statement is shown to possess particularized guarantees of trustworthiness and reliability.

C. A statement may not be admitted under this section unless the proponent of the statement notifies the adverse party of his intention to offer the statement and the substance of the statement sufficiently in advance of the proceedings to provide the adverse party with a reasonable opportunity to prepare to meet the statement, including the opportunity to subpoena witnesses.

D. In determining whether a statement possesses particularized guarantees of trustworthiness and reliability under subdivision B 2, the court shall consider, but is not limited to, the following factors:

1. The child's personal knowledge of the event;

2. The age and maturity of the child;

3. Certainty that the statement was made, including the credibility of the person testifying about the statement and any apparent motive such person may have to falsify or distort the event including bias, corruption or coercion;

4. Any apparent motive the child may have to falsify or distort the event, including bias, corruption,

or coercion;

5. The timing of the child's statement;

6. Whether more than one person heard the statement;

7. Whether the child was suffering pain or distress when making the statement;

8. Whether the child's age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;

9. Whether the statement has internal consistency or coherence, and uses terminology appropriate to the child's age;

10. Whether the statement is spontaneous or directly responsive to questions;

11. Whether the statement is responsive to suggestive or leading questions; and

12. Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement.

E. The court shall support with findings on the record, or with written findings in a court not of record, any rulings pertaining to the child's unavailability and the trustworthiness and reliability of the out-of-court statement.

§ 63.2-1523. Use of videotaped statements of complaining witnesses as evidence.

A. In any civil proceeding involving alleged abuse or neglect of a child pursuant to this chapter or pursuant to §§ 16.1-241, 16.1-251, 16.1-252, 16.1-253, 16.1-283 or § 20-107.2, a recording of a statement of the alleged victim of the offense, made prior to the proceeding, may be admissible as evidence if the requirements of subsection B are met and the court determines that:

1. The alleged victim is the age of twelve or under at the time the statement is offered into evidence;

2. The recording is both visual and oral, and every person appearing in, and every voice recorded on, the tape is identified;

3. The recording is on videotape or was recorded by other electronic means capable of making an accurate recording;

4. The recording has not been altered;

5. No attorney for any party to the proceeding was present when the statement was made;

6. The person conducting the interview of the alleged victim was authorized to do so by the child-protective services coordinator of the local department;

7. All persons present at the time the statement was taken, including the alleged victim, are present and available to testify or be cross examined at the proceeding when the recording is offered; and

8. The parties or their attorneys were provided with a list of all persons present at the recording and were afforded an opportunity to view the recording at least ten days prior to the scheduled proceedings.

B. A recorded statement may be admitted into evidence as provided in subsection A if:

1. The child testifies at the proceeding, or testifies by means of closed-circuit television, and at the time of such testimony is subject to cross examination concerning the recorded statement or the child is found by the court to be unavailable to testify on any of these grounds:

a. The child's death;

b. The child's absence from the jurisdiction, provided such absence is not for the purpose of preventing the availability of the child to testify;

c. The child's total failure of memory;

d. The child's physical or mental disability;

e. The existence of a privilege involving the child;

f. The child's incompetency, including the child's inability to communicate about the offense because of fear or a similar reason;

g. The substantial likelihood, based upon expert opinion testimony, that the child would suffer severe emotional trauma from testifying at the proceeding or by means of closed-circuit television; and

2. The child's recorded statement is shown to possess particularized guarantees of trustworthiness and reliability.

C. A recorded statement may not be admitted under this section unless the proponent of the statement notifies the adverse party of his intention to offer the statement and the substance of the statement sufficiently in advance of the proceedings to provide the adverse party with a reasonable opportunity to prepare to meet the statement, including the opportunity to subpoena witnesses.

D. In determining whether a recorded statement possesses particularized guarantees of trustworthiness and reliability under subdivision B 2, the court shall consider, but is not limited to, the following factors:

1. The child's personal knowledge of the event;

2. The age and maturity of the child;

3. Any apparent motive the child may have to falsify or distort the event, including bias, corruption, or coercion;

4. The timing of the child's statement;

5. Whether the child was suffering pain or distress when making the statement;

6. Whether the child's age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;

7. Whether the statement has a "ring of verity," has internal consistency or coherence, and uses terminology appropriate to the child's age;

8. Whether the statement is spontaneous or directly responsive to questions;

9. Whether the statement is responsive to suggestive or leading questions; and

10. Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement.

E. The court shall support with findings on the record, or with written findings in a court not of record, any rulings pertaining to the child's unavailability and the trustworthiness and reliability of the recorded statement.

§ 63.2-1524. Court may order certain examinations.

The court may order psychological, psychiatric and physical examinations of the child alleged to be abused or neglected and of the parents, guardians, caretakers or siblings of a child suspected of being neglected or abused.

§ 63.2-1525. Prima facie evidence for removal of child custody.

In the case of a petition in the court for removal of custody of a child alleged to have been abused or neglected, competent evidence by a physician that a child is abused or neglected shall constitute prima facie evidence to support such petition.

§ 63.2-1526. Appeals of certain actions of local departments.

A. A person who is suspected of or is found to have committed abuse or neglect may, within thirty days of being notified of that determination, request the local department rendering such determination to amend the determination and the local department's related records. Upon written request, the local department shall provide the appellant all information used in making its determination. Disclosure of the reporter's name or information which may endanger the well-being of a child shall not be released. The identity of a collateral witness or any other person shall not be released if disclosure may endanger his life or safety. Information prohibited from being disclosed by state or federal law or regulation shall not be released. The local department shall hold an informal conference or consultation where such person, who may be represented by counsel, shall be entitled to informally present testimony of witnesses, documents, factual data, arguments or other submissions of proof to the local department. With the exception of the local director, no person whose regular duties include substantial involvement with child abuse and neglect cases shall preside over the informal conference. If the local department refuses the request for amendment or fails to act within forty-five days after receiving such request, the person may, within thirty days thereafter, petition the Commissioner, who shall grant a hearing to determine whether it appears, by a preponderance of the evidence, that the determination or record contains information which is irrelevant or inaccurate regarding the commission of abuse or neglect by the person who is the subject of the determination or record and therefore shall be amended. A person who is the subject of a report who requests an amendment to the record, as provided above, has the right to obtain an extension for an additional specified period of up to sixty days by requesting in writing that the forty-five days in which the local department must act be extended. The extension period, which may be up to sixty days, shall begin at the end of the forty-five days in which the local department must act. When there is an extension period, the thirty-day period to request an administrative hearing shall begin on the termination of the extension period.

B. The Commissioner shall designate and authorize one or more members of his staff to conduct such hearings. The decision of any staff member so designated and authorized shall have the same force and effect as if the Commissioner had made the decision. The hearing officer shall have the authority to issue subpoenas for the production of documents and the appearance of witnesses. The hearing officer is authorized to determine the number of depositions that will be allowed and to administer oaths or affirmations to all parties and witnesses who plan to testify at the hearing. The Board shall adopt regulations necessary for the conduct of such hearings. Such regulations shall include provisions stating that the person who is the subject of the report has the right (i) to submit oral or written testimony or documents in support of himself and (ii) to be informed of the procedure by which information will be made available or withheld from him. In case of any information withheld, such person shall be advised of the general nature of such information and the reasons, for reasons of privacy or otherwise, that it is being withheld. Upon giving reasonable notice, either party at his own expense may depose a nonparty and submit such deposition at the hearing pursuant to Board regulation. Upon good cause shown, after a party's written motion, the hearing officer may issue subpoenas for the production of documents or to compel the attendance of witnesses at the hearing, except that alleged child victims of the person and their siblings shall not be subpoenaed, deposed or required to testify. The person who is the subject of the report may be represented by counsel at the hearing. Upon petition, the court shall have the power

to enforce any subpoena that is not complied with or to review any refusal to issue a subpoena. Such decisions may not be further appealed except as part of a final decision that is subject to judicial review. Such hearing officers are empowered to order the amendment of such determination or records as is required to make them accurate and consistent with the requirements of this chapter or the regulations adopted hereunder. If, after hearing the facts of the case, the hearing officer determines that the person who is the subject of the report has presented information that was not available to the local department at the time of the local conference and which if available may have resulted in a different determination by the local department, he may remand the case to the local department for reconsideration. The local department shall have fourteen days in which to reconsider the case. If, at the expiration of fourteen days, the local department fails to act or fails to amend the record to the satisfaction of the appellant, the case shall be returned to the hearing officer for a determination. If aggrieved by the decision of the hearing officer, such person may obtain further review of the decision in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq.).

C. Whenever an appeal of the local department's finding is made and a criminal charge is also filed against the appellant for the same conduct involving the same victim as investigated by the local department, the appeal process shall automatically be stayed until the criminal prosecution in circuit court is completed. During such stay, the appellant's right of access to the records of the local department regarding the matter being appealed shall also be stayed. Once the criminal prosecution in circuit court has been completed, the local department shall advise the appellant in writing of his right to resume his appeal within the time frames provided by law and regulation.

Article 5.

Oversight and Evaluation of Program.

§ 63.2-1527. Board oversight duties.

A. The Board shall be responsible for establishing standards for out-of-family investigations. The Board shall establish an advisory committee including, but not limited to, representatives of the following types of organizations or groups: public school employees, a hospital for children, a licensed child care center, a juvenile detention home, a public or private residential facility for children, a family day care home, a local department, a religious organization with a program for children, and Virginians for Child Abuse Prevention. The Chairman of the Board shall appoint such persons for terms established by the Board. The committee shall advise the Board on the effectiveness of the policies and standards governing out-of-family investigations.

B. The Board shall establish standards for the implementation of the family assessment track of the differential response system.

§ 63.2-1528. Advisory Committee continued as Advisory Board.

The Advisory Committee on Child Abuse and Neglect is continued and shall hereafter be known as the Advisory Board on Child Abuse and Neglect. The Advisory Board shall be composed of nine persons appointed by the Governor for three-year staggered terms, and permanent members including the Superintendent of Public Instruction, the Commissioner of the Department of Health, the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Commissioner of the Department of Social Services, the Director of the Department of Juvenile Justice, the Director of the Department of Corrections, the Director of the Department of Criminal Justice Services, and the Attorney General of Virginia, or their designees. The Advisory Board shall meet quarterly and, as the need may arise, advise the Department, Board and Governor on matters concerning programs for the prevention and treatment of abused and neglected children and their families.

§ 63.2-1529. Evaluation of the child-protective services differential response system.

The Department shall evaluate and report on the impact and effectiveness of the implementation of the child-protective services differential response system in meeting the purposes set forth in this chapter. The evaluation shall include, but is not limited to, the following information: changes in the number of investigations, the number of families receiving services, the number of families rejecting services, the impact on out-of-home placements, the availability of needed services, community cooperation, successes and problems encountered, the overall operation of the child-protective services differential response system and recommendations for improvement. The Department shall submit annual reports to the House Committee on Health, Welfare and Institutions and the Senate Committee on Rehabilitation and Social Services.

CHAPTER 16.

ADULT SERVICES.

Article 1.

Adult Services.

§ 63.2-1600. Home-based services.

Each local board shall provide, subject to the supervision of the Commissioner and in accordance

with regulations adopted by the Board, for the delivery of home-based services that include homemaker, companion or chore services that will allow individuals to attain or maintain self-care and are likely to prevent or reduce dependency. Eligibility for such services shall be determined according to regulations adopted by the Board. Such services shall be provided to the extent that federal or state matching funds are made available to each locality.

§ 63.2-1601. Authority to provide adult foster care services.

Each local board is authorized to provide adult foster care services that may include recruitment, approval and supervision in accordance with regulations adopted by the Board.

§ 63.2-1602. Other adult services.

Each local board shall:

1. Participate in nursing home pre-admission screenings of all individuals pursuant to § 32.1-330;

2. Provide assisted living facility assessments of residents and applicants pursuant to § 63.2-1804;

3. Participate in long-term care service coordination pursuant to § 2.2-708;

4. Participate in prescription teams for and provide social services to patients discharged from state hospitals pursuant to §§ 37.1-98 and 37.1-197.1; and

5. Participate in other programs pursuant to state and federal law.

Article 2.

Adult Protective Services.

§ 63.2-1603. Protection of aged or incapacitated adults; definitions.

As used in this article:

"Adult" means any person eighteen years of age and older who is incapacitated and any qualifying person sixty years of age and older, who, in either case, both of whom reside in the Commonwealth; provided, however, "adult" may include incapacitated or qualifying nonresidents who are temporarily in the Commonwealth and who are in need of temporary or emergency protective services.

"Emergency" means that an adult is living in conditions that present a clear and substantial risk of death or immediate and serious physical harm to himself or others.

"Incapacitated person" means any adult who is impaired by reason of mental illness, mental retardation, physical illness or disability, advanced age or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate or carry out responsible decisions concerning his or her well-being.

§ 63.2-1604. Establishment of Adult Protective Services Unit; duties.

There is hereby created the Adult Protective Services Unit within the Adult Services Program in the Department, which shall have the following powers and duties:

1. To support, strengthen, and evaluate adult protective services programs at local departments;

2. To assist in developing and implementing programs aimed at responding to and preventing adult abuse, neglect or exploitation;

3. To prepare, disseminate, and present educational programs and materials on adult abuse, neglect and exploitation;

4. To develop and provide educational programs and materials to persons who are required by law to make reports of adult abuse, neglect, and exploitation under this chapter;

5. To establish minimum standards of training and provide educational opportunities to qualify social workers in the field of adult protective services to determine whether reports of adult abuse, neglect, or exploitation are substantiated. The Department shall establish, and the Board shall approve, a uniform training program for adult protective services workers in the Commonwealth. All adult protective services workers shall complete such training within one year from the date of implementation of the training program or within the first year of their employment;

6. To develop policies and procedures to guide the work of persons in the field of adult protective services;

7. To prepare and disseminate statistical information on adult protective services in Virginia;

8. To provide training and technical assistance to the adult protective services twenty-four-hour toll-free hotline; and

9. To provide coordination among the adult protective services program and other state social services, medical and legal agencies.

§ 63.2-1605. Protective services for aged and incapacitated adults.

Each local board, to the extent that federal or state matching funds are made available to each locality, shall provide, subject to supervision of the Commissioner and in accordance with regulations adopted by the Board, adult protective services for persons who are found to be abused, neglected or exploited and who meet one of the following criteria: (i) the person is sixty years of age or older or (ii) the person is incapacitated and has no relative or other person able, available and willing to provide guidance, supervision or other needed care. The requirement to provide such services shall not limit the right of any individual to refuse to accept any of the services so offered, except as provided in

§ 63.2-1608.

§ 63.2-1606. Protection of aged or incapacitated adults; mandated and voluntary reporting; penalty for failure to report.

A. Matters giving reason to suspect the abuse, neglect or exploitation of adults shall be reported by any person licensed to practice medicine or any of the healing arts, any hospital resident or intern, any person employed in the nursing profession, any person employed by a public or private agency or facility and working with adults, any person providing full-time or part-time care to adults for pay on a regularly scheduled basis, any person employed as a social worker, any mental health professional and any law-enforcement officer, in his professional or official capacity, who has reason to suspect that an adult is an abused, neglected or exploited adult. The report shall be made immediately to the local department of the county or city wherein the adult resides or wherein the adult abuse, neglect or exploitation is believed to have occurred. If neither locality is known, then the report shall be made to the local department of the county or city where the adult abuse, neglect, or exploitation was discovered. If the information is received by a staff member, resident, intern or nurse in the course of professional services in a hospital or similar institution, such person may, in place of the report, immediately notify the person in charge of the institution or department, or his designee, who shall make such report forthwith. Any person required to make the report or notification required by this subsection shall do so either orally or in writing and shall disclose all information that is the basis for the suspicion of adult abuse, neglect or exploitation. Upon request, any person required to make the report shall make available to the adult protective services worker and the local department investigating the reported case of adult abuse, neglect or exploitation any information, records or reports which document the basis for the report. All persons required to report suspected adult abuse, neglect or exploitation who maintain a record of a person who is the subject of such a report shall cooperate with the investigating adult protective services worker of a local department and shall make information, records and reports which are relevant to the investigation available to such worker to the extent permitted by state and federal law.

B. The report required by subsection A shall be reduced to writing within seventy-two hours by the director of the local department on a form prescribed by the Board.

C. Any person required to make a report pursuant to subsection A who has reason to suspect that an adult has been sexually abused as that term is defined in § 18.2-67.10, and any person in charge of a hospital or similar institution, or a department thereof, who receives such information from a staff member, resident, intern or nurse, also shall immediately report the matter, either orally or in writing, to the local law-enforcement agency where the adult resides or the sexual abuse is believed to have occurred, or if neither locality is known, then where the abuse was discovered. The person making the report shall disclose and, upon request, make available to the law-enforcement agency all information forming the basis of the report.

D. Any financial institution that suspects that an adult customer has been exploited financially may report such suspected exploitation to the local department of the county or city wherein the adult resides or wherein the exploitation is believed to have occurred. Such a complaint may be oral or in writing. For purposes of this section, a financial institution means any bank, savings institution, credit union, securities firm, or insurance company.

E. Any person other than those specified in subsection A who suspects that an adult is an abused, neglected or exploited adult may report the matter to the local department of the county or city wherein the adult resides or wherein the abuse, neglect or exploitation is believed to have occurred. Such a complaint may be oral or in writing.

F. Any person who makes a report or provides records or information pursuant to subsection A, D or E or who testifies in any judicial proceeding arising from such report, records or information shall be immune from any civil or criminal liability on account of such report, records, information or testimony, unless such person acted in bad faith or with a malicious purpose.

G. All law-enforcement departments and other state and local departments, agencies, authorities and institutions shall cooperate with each adult protective services worker of a local department in the detection and prevention of adult abuse, neglect or exploitation.

H. Any person who is found guilty of failing to make a required report or notification pursuant to subsection A or C, within twenty-four hours of having the reason to suspect abuse, shall be fined not more than $500 for the first failure and not less than $100 nor more than $1,000 for any subsequent failures.

§ 63.2-1607. Duty of director upon receiving report.

Any local director who receives a report that a person is in need of adult protective services shall make a prompt and thorough investigation to determine whether the person is in need of adult protective services and what services are needed. The investigation shall include a visit to the person and consultation with others having knowledge of the facts of the particular case. If the local

department is denied access to interview the person or denied entrance to the residence of the person believed to be an adult in need of adult protective services, the local department may petition the circuit court for an order allowing access or entry or both. Upon a showing of good cause, the court may enter such order upon a petition supported by an affidavit or by sworn testimony in person that establishes that such department has received a report that the individual is in need of adult protective services and access to interview the person has been denied the local department by a third party. After completing the investigation, the local director shall make a written report of the case indicating whether he believes adult protective services are needed. If a report that a person is in need of adult protective services is unfounded, the local director shall notify the individual making the report of this determination. If the local director determines that the adult needs adult protective services according to the criteria set forth in subsection A of § 63.2-1609, the local director may petition the circuit court for an emergency order for adult protective services pursuant to § 63.2-1609. If the case involves a regulated facility, and if the person alleged to be in need of services leaves the facility or if his safety is otherwise assured, the local director shall forthwith refer the case to the appropriate regulatory authority or agency for administrative or criminal investigation. The local director shall, not later than forty-five days after referral, contact the investigating agency to determine the status of the investigation.

§ 63.2-1608. Involuntary adult protective services.

A. If an adult lacks the capacity to consent to receive adult protective services, these services may be ordered by a court on an involuntary basis through an emergency order pursuant to § 63.2-1609 or through the appointment of a guardian pursuant to Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1.

B. In ordering involuntary adult protective services, the court shall authorize only that intervention which it finds to be least restrictive of the adult's liberty and rights, while consistent with his welfare and safety. The basis for such finding shall be stated in the record by the court.

C. The adult shall not be required to pay for involuntary adult protective services, unless such payment is authorized by the court upon a showing that the person is financially able to pay. In such event the court shall provide for reimbursement of the actual costs incurred by the local department in providing adult protective services, excluding administrative costs.

§ 63.2-1609. Emergency order for adult protective services.

A. Upon petition by the local department to the circuit court, the court may issue an order authorizing the provision of adult protective services on an emergency basis to an adult after finding on the record, based on a greater weight of the evidence, that:

1. The adult is incapacitated;

2. An emergency exists;

3. The adult lacks the capacity to consent to receive adult protective services; and

4. The proposed order is substantially supported by the findings of the local department which has investigated the case, or if not so supported, there are compelling reasons for ordering services.

B. In issuing an emergency order, the court shall adhere to the following limitations:

1. Only such adult protective services as are necessary to improve or correct the conditions creating the emergency shall be ordered, and the court shall designate the approved services in its order. In ordering adult protective services the court shall consider the right of a person to rely on nonmedical remedial treatment in accordance with a recognized religious method of healing in lieu of medical care.

2. The court shall specifically find in the emergency order whether hospitalization or a change of residence is necessary. Approval of the hospitalization or change of residence shall be stated in the order. No person may be committed to a mental health facility under this section.

3. Adult protective services may be provided through an appropriate court order only for a period of five days. The original order may be renewed once for a five-day period upon a showing to the court that continuation of the original order is necessary to remove the emergency.

4. In its order the court shall appoint the petitioner or another interested person, as temporary guardian of the adult with responsibility for the person's welfare and authority to give consent for the person for the approved adult protective services until the expiration of the order.

5. The issuance of an emergency order and the appointment of a temporary guardian shall not deprive the adult of any rights except to the extent provided for in the order or appointment.

C. The petition for an emergency order shall set forth the name, address, and interest of the petitioner; the name, age and address of the adult in need of adult protective services; the nature of the emergency; the nature of the person's disability, if determinable; the proposed adult protective services; the petitioner's reasonable belief, together with facts supportive thereof, as to the existence of the facts stated in subdivisions A 1 through A 4; and facts showing the petitioner's attempts to obtain the adult's consent to the services and the outcomes of such attempts.

D. Written notice of the time, date and place for the hearing shall be given to the person, to his

spouse, or if none, to his nearest known next of kin, and a copy of the petition shall be attached. Such notice shall be given at least twenty-four hours prior to the hearing for emergency intervention. The court may waive the twenty-four-hour notice requirement upon showing that (i) immediate and reasonably foreseeable physical harm to the person or others will result from the twenty-four-hour delay, and (ii) reasonable attempts have been made to notify the adult, his spouse, or if none, his nearest known next of kin.

E. Upon receipt of a petition for an emergency order for adult protective services, the court shall hold a hearing. The adult who is the subject of the petition shall have the right to be present and be represented by counsel at the hearing. If it is determined that the person is indigent, or, in the determination of the judge, lacks capacity to waive the right to counsel, the court shall locate and appoint a guardian ad litem. If the person is indigent, the cost of the proceeding shall be borne by the Commonwealth. If the person is not indigent, the cost of the proceeding shall be borne by such person. This hearing shall be held no earlier than twenty-four hours after the notice required in subsection D has been given, unless such notice has been waived by the court.

F. The adult, the temporary guardian or any interested person may petition the court to have the emergency order set aside or modified at any time there is evidence that a substantial change in the circumstances of the person for whom the emergency services were ordered has occurred.

G. Where adult protective services are rendered on the basis of an emergency order, the temporary guardian shall submit to the court a report describing the circumstances thereof including the name, place, date and nature of the services provided. This report shall become part of the court record. Such report shall be confidential and open only to such persons as may be directed by the court.

H. If the person continues to need adult protective services after the renewal order provided in subdivision B 3 has expired, the temporary guardian or the local department shall immediately petition the court to appoint a guardian pursuant to Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1.

§ 63.2-1610. Voluntary adult protective services.

A. Any adult may receive adult protective services, provided or arranged for by the director if the adult requests or affirmatively consents to receive these services. If the person withdraws or refuses consent, the services shall not be provided.

B. No person shall interfere with the provision of adult protective services to an adult who requests or consents to receive such services. In the event that interference occurs on a continuing basis, the director may petition the court to enjoin such interference.

C. The actual costs incurred by the local department in providing adult protective services shall be borne by the local department, unless the adult agrees to pay for them or a court authorizes the local department to receive reasonable reimbursement for the adult protective services, excluding administrative costs, from the person's assets after a finding that the adult is financially able to make such payment.

Article 3.

Domestic Violence Prevention Services.

§ 63.2-1611. Policy of Commonwealth; Department designated agency to coordinate state efforts.

The General Assembly declares that it is the policy of this Commonwealth to support the efforts of public and private community groups seeking to provide assistance to and treatment for the victims of domestic violence and to provide recognition to the need to combat all phases of domestic violence in this Commonwealth. To this end the Department is designated as the state agency responsible for coordinating state efforts in this regard.

§ 63.2-1612. Responsibilities of Department.

It shall be the responsibility of the Department, to the extent that funds are appropriated by the General Assembly or otherwise made available, to:

1. Provide a clearinghouse for information exchange about domestic violence;

2. Encourage the use of existing information and referral agencies to provide specialized information on domestic violence;

3. Develop and maintain a statewide list of available community and state resources for the victims of domestic violence;

4. Promote interagency cooperation for technical assistance, data collection and service delivery;

5. Act as the administering agent for state grant funds for community groups seeking to establish service programs for the victims of domestic violence; and

6. Provide technical assistance on establishing shelters, self-help groups and other necessary service delivery programs.

§ 63.2-1613. Responsibilities of local departments.

Local departments may, to the extent that funds are available:

1. Promote interagency cooperation at the local level for technical assistance, data collection and service delivery; and

2. Provide services directly to victims of domestic violence.

§ 63.2-1614. Authority to receive and grant funds.

Subject to regulations of the Board and to the availability of state or federal funds for services to the victims of domestic violence, the Department is authorized to:

1. Receive state and federal funds for services to the victims of domestic violence;

2. Disperse funds through matching grants to local, public or private nonprofit agencies to provide service programs for the victims of domestic violence; and

3. Develop and implement grant mechanisms for funding such local services.

§ 63.2-1615. What functions and services may be funded.

In dispersing funds through grants to local agencies to provide service programs for the victims of domestic violence, the Department may fund both administrative functions and the delivery of direct services, including a portion of: the operational costs of offices and shelters including staff, rent, utilities, travel and supplies; twenty-four-hour crisis intervention hotlines; counseling; information and referral; self-help groups; transportation; emergency shelter; and follow-up services.

Subtitle IV.

Licensure.

CHAPTER 17.

LICENSURE AND REGISTRATION PROCEDURES.

Article 1.

General Provisions.

§ 63.2-1700. Application fees; regulations and schedules; use of fees; certain facilities, centers and agencies exempt.

The Board is authorized to adopt regulations and schedules for fees to be charged for processing applications for licenses to operate assisted living facilities, adult day care centers and child welfare agencies. Such schedules shall specify minimum and maximum fees and, where appropriate, gradations based on the capacity of such facilities, centers and agencies. Fees shall be used for the development and delivery of training for operators and staff of facilities, centers and agencies. Fees shall be expended for this purpose within two fiscal years following the fiscal year in which they are collected. These fees shall not be applicable to facilities, centers or agencies operated by federal entities.

The Board, in consultation with the Child Day-Care Council, shall develop training programs for operators and staffs of licensed child day programs. Such programs shall include formal and informal training offered by institutions of higher education, state and national associations representing child care professionals, local and regional early childhood educational organizations and licensed child care providers. To the maximum extent possible, the Board shall ensure that all provider interests are represented and that no single approach to training shall be given preference.

§ 63.2-1701. Licenses required; issuance, expiration and renewal; maximum number of residents, participants or children; posting of licenses.

A. Every person who constitutes, or who operates or maintains, an assisted living facility, adult day care center or child welfare agency shall obtain the appropriate license from the Commissioner, which may be renewed. The Commissioner, upon request, shall consult with, advise, and assist any person interested in securing and maintaining any such license. Each application for a license shall be made to the Commissioner, in such form as he may prescribe. It shall contain the name and address of the applicant, and, if the applicant is an association, partnership, limited liability company or corporation, the names and addresses of its officers and agents. The application shall also contain a description of the activities proposed to be engaged in and the facilities and services to be employed, together with other pertinent information as the Commissioner may require.

B. The licenses shall be issued on forms prescribed by the Commissioner. Any two or more licenses may be issued for concurrent operation of more than one assisted living facility, adult day care center or child welfare agency, but each license shall be issued upon a separate form. Each license and renewals thereof for an assisted living facility, adult day care center or child welfare agency may be issued for periods of up to three successive years, unless sooner revoked or surrendered.

C. The length of each license or renewal thereof for an assisted living facility shall be based on the judgment of the Commissioner regarding the compliance history of the facility and the extent to which it meets or exceeds state licensing standards. Based on this judgment, the Commissioner may issue licenses or renewals thereof for periods of six months, one year, two years, or three years.

D. The Commissioner may extend or shorten the duration of licensure periods for a child welfare agency whenever, in his sole discretion, it is administratively necessary to redistribute the workload for greater efficiency in staff utilization.

E. Each license shall indicate the maximum number of persons who may be cared for in the assisted living facility, adult day care center or child welfare agency for which it is issued.

F. The license and any other documents required by the Commissioner shall be posted in a

conspicuous place on the licensed premises.

G. Every person issued a license which has not been suspended or revoked shall renew such license prior to its expiration.

§ 63.2-1702. Investigation on receipt of application.

Upon receipt of the application the Commissioner shall cause an investigation to be made of the activities, services and facilities of the applicant, of the applicant's financial responsibility, and of his character and reputation or, if the applicant is an association, partnership, limited liability company or corporation, the character and reputation of its officers and agents. In the case of child welfare agencies, the financial records of an applicant shall not be subject to inspection if the applicant submits a current balance sheet and income statement accompanied by a letter from a certified public accountant certifying the accuracy thereof and three credit references. In the case of child welfare agencies, the character and reputation investigation upon application shall include background checks pursuant to § 63.2-1721; however, a children's residential facility shall comply with the background check requirements contained in § 63.2-1726.

§ 63.2-1703. Variances.

The Commissioner may grant a variance to a regulation when the Commissioner determines that (i) a licensee or applicant for licensure as an assisted living facility, adult day center or child welfare agency has demonstrated that the implementation of a regulation would impose a substantial financial or programmatic hardship and (ii) the variance would not adversely affect the safety and well-being of residents, participants or children in care. The Commissioner shall review each allowable variance at least annually. At a minimum, this review shall address the impact of the allowable variance on persons in care, adherence by the licensee to any conditions attached, and the continuing need for the allowable variance.

§ 63.2-1704. Voluntary registration of family day homes; inspections; investigation upon receipt of complaint; revocation or suspension of registration.

A. Any person who maintains a family day home serving fewer than six children, exclusive of the provider's own children and any children who reside in the home, may apply for voluntary registration. An applicant shall file with the Commissioner, prior to beginning any such operation and thereafter biennially, a statement which shall include, but not be limited to, the following:

1. The name, address, phone number, and social security number of the person maintaining the family day home;

2. The number and ages of the children to receive care;

3. A sworn statement or affirmation in which the applicant attests to the accuracy of the information submitted to the Commissioner;

4. Documentation that the background check requirements for registered child welfare agencies in Article 3 (§ 63.2-1719 et seq.) of this chapter have been met; and

5. Documentation that the home has met the requirements of a self-administered health and safety guidelines evaluation checklist adopted by the Board.

Upon receiving such information on prescribed forms, and after having determined that the home has satisfied the standards for voluntary registration, the Commissioner shall issue a certificate of registration to the family day home.

B. The Commissioner shall contract with qualified local agencies and community organizations to certify family day homes as eligible for registration, pursuant to Board regulations. If no qualified local agencies or community organizations are available, the Commissioner shall implement the provisions of this section. Upon receipt of an application of a qualified local agency or community organization to certify family day homes as eligible for registration, the Commissioner shall cause an investigation to be made of the applicant's activities, services, facilities, and financial responsibility, of the character and reputation of the officers and agents of the applicant, and of its compliance with requirements established for the issuance of such contracts.

C. The Board shall adopt regulations to implement the provisions of this section. Such regulations shall provide guidelines for the following:

1. The identification of family day homes which may meet the standards for voluntary registration provided in subsection A;

2. The establishment of qualifications for local agencies and community organizations to which a contract may be issued by the Commissioner for the certification of family day homes as eligible for registration, and standards for the purpose of ensuring compliance with the standards and requirements of the contract, including monitoring and random inspections;

3. The establishment of standards and requirements for contracts issued by the Commissioner to qualified local agencies and community organizations, upon review of the Board, for the certification of family day homes as eligible for registration;

4. A requirement that the contract organization shall provide administrative services, including, but

not limited to, processing applications for the voluntary registration of family day homes, certifying such homes as eligible for registration, providing technical assistance, training and consultation with family day homes, and maintaining permanent records regarding all family day homes which it may certify as eligible for registration;

5. The establishment of requirements for a self-administered health and safety guidelines evaluation checklist;

6. The criteria and process for the renewal of the certificate of registration; and

7. A schedule for charges to be made by the contract organization or by the Department if it implements the provisions of this section, for processing applications for the voluntary registration of family day homes. The charges collected shall be maintained for the purpose of recovering administrative costs incurred in processing applications and certifying as eligible or registering such homes.

D. The contract organization, upon determining that a family day home has satisfied the standards for voluntary registration, shall certify the home as eligible for registration on forms prescribed by the Commissioner. The Commissioner, upon determining that certification has been properly issued, may register the family day home.

E. The provisions of this section shall not apply to any family day home located in a county, city, or town in which the governing body provides by ordinance for the regulation and licensing of persons who provide child-care services for compensation and for the regulation and licensing of child-care facilities pursuant to the provisions of § 15.2-914.

F. Upon receipt of a complaint concerning a registered family day home, the Commissioner shall cause an investigation to be made, including on-site visits as he deems necessary, of the activities, services, and facilities. The person who maintains such home shall afford the Commissioner reasonable opportunity to inspect the operator's facilities and records and to interview any employees and any child or other person within his custody or control. Whenever a registered family day home is determined by the Commissioner to be in noncompliance with the standards for voluntary registration, the Commissioner shall give reasonable notice to the operator of the nature of the noncompliance and may thereafter revoke or suspend the registration.

§ 63.2-1705. Compliance with Uniform Statewide Building Code.

A. Buildings licensed as assisted living facilities, adult day care centers and child welfare agencies shall be classified by and meet the specifications for the proper Use Group as required by the Virginia Uniform Statewide Building Code.

B. Buildings used for assisted living facilities or adult day care centers shall be licensed for ambulatory or nonambulatory residents or participants. Ambulatory means the condition of a resident or participant who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by the Uniform Statewide Building Code without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such resident or participant may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate. Nonambulatory means the condition of a resident or participant who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.

§ 63.2-1706. Inspections and interviews.

A. Applicants for licensure and licensees shall at all times afford the Commissioner reasonable opportunity to inspect all of their facilities, books and records, and to interview their agents and employees and any person living or participating in such facilities, or under their custody, control, direction or supervision.

B. For any assisted living facility or adult day care center issued a license or renewal thereof for a period of six months, the Commissioner shall make at least two inspections during the six-month period, one of which shall be unannounced. For any assisted living facility or adult day care center issued a license or renewal thereof for a period of one year, the Commissioner shall make at least three inspections each year, at least two of which shall be unannounced. For any assisted living facility or adult day care center issued a license or a renewal thereof for a period of two years, the Commissioner shall make at least two inspections each year, at least one of which shall be unannounced. For any assisted living facility or adult day care center issued a three-year license, the Commissioner shall make at least one inspection each year, which shall be unannounced.

C. All licensed child welfare agencies shall be inspected not less than twice annually, and one of those inspections shall be unannounced.

D. The activities, services and facilities of each applicant for renewal of his license as an assisted living facility, adult day care center or child welfare agency shall be subject to an inspection or examination by the Commissioner to determine if he is in compliance with current regulations of the Board or Child Day-Care Council, whichever is applicable.

E. For any licensed assisted living facility, adult day care center or child welfare agency, the Commissioner may authorize such other announced or unannounced inspections as the Commissioner considers appropriate.

§ 63.2-1707. Issuance or refusal of license; notification; provisional and conditional licenses.

Upon completion of his investigation, the Commissioner shall issue an appropriate license to the applicant if (i) the applicant has made adequate provision for such activities, services and facilities as are reasonably conducive to the welfare of the residents, participants or children over whom he may have custody or control; (ii) the applicant has submitted satisfactory documentation of financial responsibility such as, but not limited to, a letter of credit, a certified financial statement, or similar documents; (iii) he is, or the officers and agents of the applicant if it is an association, partnership, limited liability company or corporation are, of good character and reputation; and (iv) the applicant and agents comply with the provisions of this subtitle. Otherwise, the license shall be denied. Immediately upon taking final action, the Commissioner shall notify the applicant of such action.

Upon completion of the investigation for the renewal of a license, the Commissioner may issue a provisional license to any applicant if the applicant is temporarily unable to comply with all of the licensure requirements. Such provisional license may be renewed, but the issuance of a provisional license and any renewals thereof shall be for no longer a period than six successive months.

At the discretion of the Commissioner, a conditional license may be issued to an applicant to operate a new facility in order to permit the applicant to demonstrate compliance with licensure requirements. Such conditional license may be renewed, but the issuance of a conditional license and any renewals thereof shall be for no longer a period than six successive months.

§ 63.2-1708. Records and reports.

Every licensed assisted living facility, licensed adult day care center, licensed or registered child welfare agency, or family day home approved by a family day system shall keep such records and make such reports to the Commissioner as he may require. The forms to be used in the making of such reports shall be prescribed and furnished by the Commissioner.

§ 63.2-1709. Enforcement and sanctions; special orders.

A. The Board shall adopt regulations for the Commissioner to use in determining when the imposition of administrative sanctions or initiation of court proceedings, severally or jointly, is appropriate in order to ensure prompt correction of violations in assisted living facilities and adult day care centers involving noncompliance with state law or regulation as discovered through any inspection or investigation conducted by the Departments of Social Services, Health, or Mental Health, Mental Retardation and Substance Abuse Services. The Commissioner may impose such sanctions or take such actions as are appropriate for violation of any of the provisions of this subtitle or any regulation adopted under any provision of this subtitle that adversely affects the health, safety or welfare of an assisted living facility resident or an adult day care participant. Such sanctions or actions may include (i) petitioning the court to appoint a receiver for any assisted living facility or adult day care center and (ii) revoking or denying renewal of the license for the assisted living facility or adult day care center for violation of any of the provisions of this subtitle, § 54.1-3408 or any regulation adopted under this subtitle that violation adversely affects, or is an imminent and substantial threat to, the health, safety or welfare of the person cared for therein, or for permitting, aiding or abetting the commission of any illegal act in an assisted living facility or adult day care center.

B. The Commissioner may revoke or deny the renewal of the license of any child welfare agency which violates any provision of this subtitle or fails to comply with the limitations and standards set forth in its license.

C. Notwithstanding any other provision of law, following a proceeding as provided in § 2.2-4019, the Commissioner may issue a special order for violation of any of the provisions of this subtitle, § 54.1-3408 or any regulation adopted under any provision of this subtitle that violation adversely affects, or is an imminent and substantial threat to, the health, safety or welfare of the person cared for therein, or for permitting, aiding or abetting the commission of any illegal act in an assisted living facility, adult day care center or child welfare agency. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001. The Commissioner shall not delegate his authority to impose civil penalties in conjunction with the issuance of special orders.

D. The Commissioner may take the following actions regarding licensed assisted living facilities, adult day care centers and child welfare agencies through the issuance of a special order:

1. Place a licensee on probation upon finding that the licensee is substantially out of compliance with the terms of its license and that the health and safety of residents, participants or children are at risk;

2. Reduce licensed capacity or prohibit new admissions when the Commissioner concludes that the licensee cannot make necessary corrections to achieve compliance with regulations except by a temporary restriction of its scope of service;

3. Require that probationary status announcements, provisional licenses, and denial or revocation notices be posted in a prominent place at each public entrance of the licensed premises and be of sufficient size and distinction to advise consumers of serious or persistent violations;

4. Mandate training for the licensee or licensee's employees, with any costs to be borne by the licensee, when the Commissioner concludes that the lack of such training has led directly to violations of regulations;

5. Assess civil penalties of not more than $500 per inspection upon finding that the licensee is substantially out of compliance with the terms of its license and the health and safety of residents, participants or children are at risk;

6. Require licensees to contact parents, guardians or other responsible persons in writing regarding health and safety violations; and

7. Prevent licensees who are substantially out of compliance with the licensure terms or in violation of the regulations from receiving public funds.

E. The Board shall adopt regulations to implement the provisions of this section.

§ 63.2-1710. Appeal from refusal, denial of renewal or revocation of license.

A. Whenever the Commissioner refuses to issue a license or to renew a license, or revokes a license for an assisted living facility, adult day care center or child welfare agency, the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall apply, except that all appeals from notice of the Commissioner's intent to refuse to issue or renew, or revoke a license shall be received in writing from the assisted living facility, adult day care center or child welfare agency operator within fifteen days of the date of receipt of the notice. Judicial review of a final review agency decision shall be in accordance with the provisions of the Administrative Process Act. No stay may be granted upon appeal to the Virginia Supreme Court.

B. In every appeal to a court of record, the Commissioner shall be named defendant.

C. An appeal, taken as provided in this section, shall operate to stay any criminal prosecution for operation without a license.

D. When issuance or renewal of a license as an assisted living facility or adult day care center has been refused by the Commissioner, the applicant shall not thereafter for a period of one year apply again for such license unless the Commissioner in his sole discretion believes that there has been such a change in the conditions on account of which he refused the prior application as to justify considering the new application. When an appeal is taken by the applicant pursuant to subsection A, the one-year period shall be extended until a final decision has been rendered on appeal.

E. When issuance or renewal of a license for a child welfare agency has been refused by the Commissioner, the applicant shall not thereafter for a period of six months apply again for such license unless the Commissioner in his sole discretion believes that there has been such a change in the conditions on account of which he refused the prior application as to justify considering the new application. When an appeal is taken by the applicant pursuant to subsection A, the six-month period shall be extended until a final decision has been rendered on appeal.

§ 63.2-1711. Injunction against operation without license.

Any circuit court having jurisdiction in the county or city where the principal office of any assisted living facility, adult day care center or child welfare agency is located shall, at the suit of the Commissioner, have jurisdiction to enjoin its operation without a license required by this subtitle.

§ 63.2-1712. Offenses; penalty.

Any person, and each officer and each member of the governing board of any association or corporation that operates an assisted living facility, adult day care center or child welfare agency, shall be guilty of a Class 1 misdemeanor if he:

1. Interferes with any representative of the Commissioner in the discharge of his duties under this subtitle;

2. Makes to the Commissioner or any representative of the Commissioner any report or statement, with respect to the operation of any assisted living facility, adult day care center or child welfare agency, that is known by such person to be false or untrue;

3. Operates or engages in the conduct of an assisted living facility, adult day care center or child welfare agency without first obtaining a license as required by this subtitle or after such license has been revoked or has expired and not been renewed. No violation shall occur if the facility, center or agency has applied to the Department for renewal prior to the expiration date of the license. Every day's violation of this subdivision shall constitute a separate offense; or

4. Operates or engages in the conduct of an assisted living facility, adult day care center or child welfare agency serving more persons than the maximum stipulated in the license.

§ 63.2-1713. Misleading advertising prohibited.

No assisted living facility, adult day care center or child welfare agency shall make, publish, disseminate, circulate, or place before the public or cause, directly or indirectly, to be made, published,

disseminated, circulated or placed before the public in this Commonwealth, in a newspaper or other publication; in the form of a book, notice, handbill, poster, blueprint, map, bill, tag, label, circular, pamphlet, or letter; or via electronic mail, website, automatic mailing list services (listservs), newsgroups, facsimile, chat rooms; or in any other way an advertisement of any sort regarding services or anything so offered to the public, which advertisement contains any promise, assertion, representation or statement of fact that is untrue, deceptive or misleading.

§ 63.2-1714. Duty of attorneys for the Commonwealth.

It shall be the duty of the attorney for the Commonwealth of every county and city to prosecute all violations of this subtitle.

Article 2.

Unlicensed Programs.

§ 63.2-1715. Exemptions from licensure.

A. The following child day programs shall not be required to be licensed:

1. A child day center that has obtained an exemption pursuant to § 63.2-1716.

2. A program where, by written policy given to and signed by a parent or guardian, children are free to enter and leave the premises without permission or supervision. A program that would qualify for this exemption except that it assumes responsibility for the supervision, protection and well-being of several children with disabilities who are mainstreamed shall not be subject to licensure.

3. A program of instructional experience in a single focus, such as, but not limited to, computer science, archaeology, sport clinics, or music, if children under the age of six do not attend at all and if no child is allowed to attend for more than twenty-five days in any three-month period commencing with enrollment. This exemption does not apply if children merely change their enrollment to a different focus area at a site offering a variety of activities and such children's attendance exceeds twenty-five days in a three-month period.

4. Programs of instructional or recreational activities wherein no child under age six attends for more than six hours weekly with no class or activity period to exceed one and one-half hours, and no child six years of age or above attends for more than six hours weekly when school is in session or twelve hours weekly when school is not in session. Competition, performances and exhibitions related to the instructional or recreational activity shall be excluded when determining the hours of program operation.

5. A program that operates no more than a total of twenty program days in the course of a calendar year provided that programs serving children under age six operate no more than two consecutive weeks without a break of at least a week.

6. Instructional programs offered by public and private schools that satisfy compulsory attendance laws or the Individuals with Disabilities Education Act, as amended, and programs of school-sponsored extracurricular activities that are focused on single interests such as, but not limited to, music, sports, drama, civic service, or foreign language.

7. Education and care programs provided by public schools that are not exempt pursuant to subdivision A. 6. shall be regulated by the State Board of Education using regulations that incorporate, but may exceed, the regulations for child day centers licensed by the Commissioner.

8. Early intervention programs for children eligible under Part C of the Individuals with Disabilities Education Act, as amended, wherein no child attends for more than a total of six hours per week.

9. Practice or competition in organized competitive sports leagues.

10. Programs of religious instruction, such as Sunday schools, vacation Bible schools, and Bar Mitzvah or Bat Mitzvah classes, and child-minding services provided to allow parents or guardians who are on site to attend religious worship or instructional services.

11. Child-minding services that are not available for more than three hours per day for any individual child offered on site in commercial or recreational establishments if the parent or guardian (i) is not an on-duty employee, except for part-time employees working less than two hours per day, (ii) can be contacted and can resume responsibility for the child's supervision within thirty minutes, and (iii) is receiving or providing services or participating in activities offered by the establishment.

12. A certified preschool or nursery school program operated by a private school that is accredited by a statewide accrediting organization recognized by the State Board of Education or accredited by the National Association for the Education of Young Children's National Academy of Early Childhood Programs; the Association of Christian Schools International; the American Association of Christian Schools; the National Early Childhood Program Accreditation; the National Accreditation Council for Early Childhood Professional Personnel and Programs; the International Academy for Private Education; Standards for the American Montessori Society Accreditation; the International Accreditation and Certification of Childhood Educators, Programs, and Trainers; or the National Accreditation Commission that complies with the provisions of § 63.2-1717.

B. Family day homes that are members of a licensed family day system shall not be required to

obtain a license from the Commissioner.

C. Officers, employees, or agents of the Commonwealth, or of any county, city, or town 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.

§ 63.2-1716. Child day center operated by religious institution exempt from licensure; annual statement and documentary evidence required; enforcement; injunctive relief.

A. Notwithstanding any other provisions of this chapter, a child day center operated or conducted under the auspices of a religious institution shall be exempt from the licensure requirements of this subtitle, but shall comply with the provisions of this section unless it chooses to be licensed. If such religious institution chooses not to be licensed, it shall file with the Commissioner, prior to beginning operation of a child day center and thereafter annually, a statement of intent to operate a child day center, certification that the child day center has disclosed in writing to the parents or guardians of the children in the center the fact that it is exempt from licensure, the qualifications of the personnel employed therein and documentary evidence that:

1. Such religious institution has tax exempt status as a nonprofit religious institution in accordance with § 501(c) of the Internal Revenue Code of 1954, as amended, or that the real property owned and exclusively occupied by the religious institution is exempt from local taxation.

2. Within the prior ninety days for the initial exemption and within the prior 180 days for exemptions thereafter, the local health department and local fire marshal or Office of the State Fire Marshal, whichever is appropriate, have inspected the physical facilities of the child day center and have determined that the center is in compliance with applicable laws and regulations with regard to food service activities, health and sanitation, water supply, building codes, and the Statewide Fire Prevention Code or the Uniform Statewide Building Code.

3. The child day center employs supervisory personnel according to the following ratio of staff to children:

a. One staff member to four children from zero to twenty-four months.

b. One staff member to ten children from ages twenty-four months to six years.

c. One staff member to twenty-five children ages six years and older.

Staff shall be counted in the required staff-to-children ratios only when they are directly supervising children. In each grouping of children, at least one adult staff member shall be regularly present. Staff members shall be at least sixteen years of age. Staff members under eighteen years of age shall be under the supervision of an adult staff member. Adult staff members shall supervise no more than two staff members under eighteen years of age at any given time.

4. Each person in a supervisory position has been certified by a practicing physician to be free from any disability which would prevent him from caring for children under his supervision.

5. The center is in compliance with the requirements of:

a. This section.

b. Section 63.2-1724 relating to background checks.

c. Section 63.2-1509 relating to the reporting of suspected cases of child abuse and neglect.

d. Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 regarding a valid Virginia driver's license or commercial driver's license; of Article 21 (§ 46.2-1157 et seq.) of Chapter 10 of Title 46.2, regarding vehicle inspections; ensuring that any vehicle used to transport children is an insured motor vehicle as defined in § 46.2-705; and Article 13 (§ 46.2-1095 et seq.) of Chapter 10 of Title 46.2, regarding child restraint devices.

6. The following aspects of the child day center's operations are described in a written statement provided to the parents or guardians of the children in the center and made available to the general public: physical facilities, enrollment capacity, food services, health requirements for the staff and public liability insurance.

B. The center shall establish and implement procedures for:

1. Hand washing by staff and children before eating and after toileting and diapering.

2. Appropriate supervision of all children in care, including daily intake and dismissal procedures to ensure safety of children.

3. A daily simple health screening and exclusion of sick children by a person trained to perform such screenings.

4. Ensuring that a person trained and certified in first aid is present at the center whenever children are present.

5. Ensuring that all children in the center are in compliance with the provisions of § 32.1-46 regarding the immunization of children against certain diseases.

6. Ensuring that all areas of the premises accessible to children are free of obvious injury hazards, including providing and maintaining sand or other cushioning material under playground equipment.

7. Ensuring that all staff are able to recognize the signs of child abuse and neglect.

C. The Commissioner may perform on-site inspections of religious institutions to confirm compliance with the provisions of this section and to investigate complaints that the religious institution is not in compliance with the provisions of this section. The Commissioner may revoke the exemption for any child day center in serious or persistent violation of the requirements of this section. If a religious institution operates a child day center and does not file the statement and documentary evidence required by this section, the Commissioner shall give reasonable notice to such religious institution of the nature of its noncompliance and may thereafter take such action as he determines appropriate, including a suit to enjoin the operation of the child day center.

D. Any person who has reason to believe that a child day center falling within the provisions of this section is not in compliance with the requirements of this section may report the same to the local department, the local health department or the local fire marshal, each of which may inspect the child day center for noncompliance, give reasonable notice to the religious institution, and thereafter may take appropriate action as provided by law, including a suit to enjoin the operation of the child day center.

E. Nothing in this section shall prohibit a child day center operated by or conducted under the auspices of a religious institution from obtaining a license pursuant to this chapter.

§ 63.2-1717. Certification of preschool or nursery school programs operated by accredited private schools; provisional certification; annual statement and documentary evidence required; enforcement; injunctive relief.

A. A preschool or nursery school program operated by a private school accredited by a statewide accrediting organization recognized by the Board of Education or a private school or preschool that offers to preschool-aged children a program accredited by the National Association for the Education of Young Children's National Academy of Early Childhood Programs; the Association of Christian Schools International; the American Association of Christian Schools; the National Early Childhood Program Accreditation; the National Accreditation Council for Early Childhood Professional Personnel and Programs; the International Academy for Private Education; Standards for the American Montessori Society Accreditation; the International Accreditation and Certification of Childhood Educators, Programs, and Trainers; or the National Accreditation Commission and is recognized by the Board of Education, shall be exempt from licensure under this subtitle if it complies with the provisions of this section and meets the requirements of subsection B, C or D.

B. A school described in subsection A shall meet the following conditions in order to be exempt under this subsection:

1. The school offers kindergarten or elementary school instructional programs that satisfy compulsory school attendance laws, and children below the age of compulsory school attendance also participate in such instructional programs;

2. The instructional programs for children of and below the age of eligibility for school attendance share (i) a specific verifiable common pedagogy, (ii) education materials, (iii) methods of instruction, and (iv) professional training and individual teacher certification standards, all of which are required by a state-recognized accrediting organization;

3. The instructional programs described in subdivisions 1 and 2 have mixed age groups of three-year-old to six-year-old children and the number of pupils in the preschool program does not exceed fifteen pupils for each instructional adult;

4. The instructional program contemplates a three-to-four-year learning cycle under a common pedagogy; and

5. Children below the age of eligibility for kindergarten attendance do not attend the instructional program for more than four hours per day.

C. A school described in subsection A shall be exempt from licensure if it maintains an enrollment ratio at any one time during the current school year of five children age five or above to one four-year-old child as long as no child in attendance is under age four and the number of pupils in the preschool program does not exceed twelve pupils for each instructional adult.

D. A private school or preschool described in subsection A shall meet the following conditions in order to be exempt under this subsection:

1. The school offers instructional classes and has been in operation since January 1984.

2. The school does not hold itself out as a child care center, child day center, or child day program.

3. Children enrolled in the school are at least three years of age and do not attend more than (i) three hours per day and (ii) five days per week.

4. The enrolled children attend only one program offered by the school per day.

5. The school maintains a certificate or permit issued pursuant to a local government ordinance that addresses health, safety and welfare of the children, such as but not limited to space requirements, and requires annual inspections.

E. The school shall file with the Commissioner, prior to the beginning of the school year or calendar

year, as the case may be, and thereafter, annually, a statement which includes the following:

1. Intent to operate a certified preschool program;

2. Documentary evidence that the school has been accredited as provided in subsection A;

3. Documentation that the school has disclosed in writing to the parents, guardians, or persons having charge of a child enrolled in the school's preschool program the fact of the program's exemption from licensure;

4. Documentary evidence that the physical facility in which the preschool program will be conducted has been inspected (i) before initial certification by the local building official and (ii) within the twelve-month period prior to initial certification and at least annually thereafter by the local health department, and local fire marshal or Office of the State Fire Marshal, whichever is appropriate, and an inspection report which documents that the facility is in compliance with applicable laws and regulations pertaining to food services, health and sanitation, water supply, building codes, and the Statewide Fire Prevention Code or the Uniform Statewide Building Code;

5. Documentation that the school has disclosed the following in writing to the parents, guardians, or persons having charge of a child enrolled in the school's preschool program, and in a written statement available to the general public: (i) the school facility is in compliance with applicable laws and regulations pertaining to food services, health and sanitation, water supply, building codes, and the Statewide Fire Prevention Code or the Uniform Statewide Building Code, (ii) the preschool program's maximum capacity, (iii) the school's policy or practice for pupil-teacher ratio, staffing patterns and staff health requirements, and (iv) a description of the school's public liability insurance, if any;

6. Qualifications of school personnel who work in the preschool program; and

7. Documentary evidence that the private school requires all employees of the preschool and other school employees who have contact with the children enrolled in the preschool program to obtain a criminal record check as provided in subdivision A 11 of § 19.2-389 as a condition of initial or continued employment. The school shall not hire or continue employment of any such person who has an offense specified in § 63.2-1719.

All accredited private schools seeking certification of preschool programs shall file such information on forms prescribed by the Commissioner. The Commissioner shall certify all preschool programs of accredited private schools which comply with the provisions of subsection A.

F. A preschool program of a private school that has not been accredited as provided in subsection A, or which has not provided documentation to the Commissioner that it has initiated the accreditation process, shall be subject to licensure.

The Commissioner shall issue a provisional certificate to a private school which provides documentation to the Commissioner that it has initiated the accreditation process. The provisional certificate shall permit the school to operate its preschool program during the accreditation process period. The issuance of an initial provisional certificate shall be for a period not to exceed one year. A provisional certificate may be renewed up to an additional year if the accrediting organization provides a statement indicating it has visited the school within the previous six months and the school has made sufficient progress. Such programs shall not be subject to licensure during the provisional certification period.

G. If a school fails to complete the accreditation process or is denied accreditation, the Commissioner shall revoke the provisional certification and the program shall thereafter be subject to licensure.

H. If the preschool program of a private school which is accredited as provided in subsection A fails to file the statement and the required documentary evidence, the Commissioner shall notify the school of its noncompliance and may thereafter take such action as he determines appropriate, including notice that the program is required to be licensed.

I. The revocation or denial of the certification of a preschool program shall be subject to appeal pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Judicial review of a final agency decision shall be in accordance with the provisions of the Administrative Process Act.

J. Any person who has reason to believe that a private school falling within the provisions of this section is in noncompliance with any applicable requirement of this section may report the same to the Department, the local department, the local health department, or the local fire marshal, each of which may inspect the school for noncompliance, give reasonable notice to the school of the nature of its noncompliance, and thereafter may take appropriate action as provided by law, including a suit to enjoin the operation of the preschool program.

K. Upon receipt of a complaint concerning a certified preschool program of an accredited private school, or of a private school to which provisional certification has been issued, if for good cause shown there is reason to suspect that the school is in noncompliance with any provision of this section or the health or safety of the children attending the preschool program is in danger, the Commissioner shall cause an investigation to be made, including on-site visits as he deems necessary of the services,

personnel, and facilities of the school's program. The school shall afford the Commissioner reasonable opportunity to inspect the school's program, records, and facility, and to interview the employees and any child or parent or guardian of a child who is or has been enrolled in the preschool program. If, upon completion of the investigation, it is determined that the school is in noncompliance with the provisions of this section, the Commissioner shall give reasonable notice to the school of the nature of its noncompliance and thereafter may take appropriate action as provided by law, including a suit to enjoin the operation of the preschool program.

L. Failure of a private school to comply with the provisions of this section, or a finding that the health and safety of the children attending the preschool program are in clear and substantial danger upon the completion of an investigation, shall be grounds for revocation of the certification issued pursuant to this section.

M. If a private school operates a child day program outside the scope of its instructional classes during the school year or operates a child day program during the summer, the child day program shall be subject to licensure under the regulations adopted pursuant to § 63.2-1734.

N. Nothing in this section shall prohibit a preschool operated by or conducted under the auspices of a private school from obtaining a license pursuant to this subtitle.

§ 63.2-1718. Inspection of unlicensed child or adult care operations; inspection warrant.

In order to perform his duties under this subtitle, the Commissioner may enter and inspect any unlicensed child or adult care operation with the consent of the owner or person in charge, or pursuant to a warrant. Administrative search warrants for inspections of child or adult care operations, based upon a petition demonstrating probable cause and supported by an affidavit, may be issued ex parte by any judge having authority to issue criminal warrants whose territorial jurisdiction includes the child or adult care operation to be inspected, if he is satisfied from the petition and affidavit that there is reasonable and probable cause for the inspection. The affidavit shall contain either a statement that consent to inspect has been sought and refused, or that facts and circumstances exist reasonably justifying the failure to seek such consent. Such facts may include, without limitation, past refusals to permit inspection or facts establishing reason to believe that seeking consent would provide an opportunity to conceal violations of statutes or regulations. Probable cause may be demonstrated by an affidavit showing probable cause to believe that the child or adult care operation is in violation of any provision of this subtitle or any regulation adopted pursuant to this subtitle, or upon a showing that the inspection is to be made pursuant to a reasonable administrative plan for the administration of this subtitle. The inspection of a child or adult care operation that has been the subject of a complaint pursuant to § 63.2-1728 shall have preeminent priority over any other inspections of child or adult care operations to be made by the Commissioner unless the complaint on its face or in the context of information known to the Commissioner discloses that the complaint has been brought to harass, to retaliate, or otherwise to achieve an improper purpose, and that the improper purpose casts serious doubt on the veracity of the complaint.

Article 3.

Background Checks.

§ 63.2-1719. Definitions.

As used in this subtitle:

"Barrier crime" means a conviction of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, extortion by threat as set out in § 18.2-59, felony stalking as set out in § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies,

"barrier crime" shall also include convictions of burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2 and any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an equivalent offense in another state.

"Offense" means a barrier crime and, in the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, (i) a conviction of any other felony not included in the definition of barrier crime unless five years have elapsed since conviction and (ii) a founded complaint of child abuse or neglect within or outside the Commonwealth. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, convictions shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth.

§ 63.2-1720. Employment for compensation of persons or use of volunteers convicted of certain offenses prohibited; background check required; penalty.

A. An assisted living facility, adult day care center or child welfare agency licensed or registered in accordance with the provisions of this chapter, or family day homes approved by family day systems, shall not hire for compensated employment persons who have an offense as defined in § 63.2-1719. Such employees shall undergo background checks pursuant to subsection C. In the case of child welfare agencies, the provisions of this section shall apply to employees who are involved in the day-to-day operations of such agency or who are alone with, in control of, or supervising one or more children.

B. A licensed assisted living facility or adult day care center may hire an applicant convicted of one misdemeanor barrier crime not involving abuse or neglect or moral turpitude, provided five years have elapsed following the conviction.

C. Background checks pursuant to this section require:

1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and, in the case of child welfare agencies, whether or not the person has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. A criminal history record check through the Central Criminal Records Exchange pursuant to § 19.2-389; and

3. In the case of child welfare agencies, a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

D. Any person desiring to work as a compensated employee at a licensed assisted living facility, licensed adult day care center, a licensed or registered child welfare agency, or a family day home approved by a family day system shall provide the hiring or approving facility, center or agency with a sworn statement or affirmation pursuant to subdivision C 1. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision C 1 shall be guilty of a Class 1 misdemeanor.

E. A licensed assisted living facility, licensed adult day care center, a licensed or registered child welfare agency, or a family day home approved by a family day system shall obtain for any compensated employees within thirty days of employment (i) an original criminal record clearance with respect to convictions for offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange and (ii) in the case of licensed or registered child welfare agencies or family day homes approved by family day systems, a copy of the information from the central registry. If an applicant is denied employment because of information from the central registry or convictions appearing on his criminal history record, the assisted living facility, adult day care center or child welfare agency shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

F. No volunteer who has an offense as defined in § 63.2-1719 shall be permitted to serve in a licensed or registered child welfare agency or a family day home approved by a family day system. Any person desiring to volunteer at such a child welfare agency shall provide the agency with a sworn statement or affirmation pursuant to subdivision C 1. Such child welfare agency shall obtain for any volunteers, within thirty days of commencement of volunteer service, a copy of (i) the information from the central registry and (ii) an original criminal record clearance with respect to offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision C 1 shall be guilty of a Class 1 misdemeanor. If a volunteer is denied service because of information from the central registry or convictions appearing on his criminal history record, such child welfare agency shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the volunteer. The provisions of this subsection shall apply only to volunteers who will be alone with any child in the performance of their duties and shall not apply to a parent-volunteer of a child attending a licensed or registered child welfare agency, or a family day home approved by a family day system, whether or not such parent-volunteer will be alone

with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children that includes the parent-volunteer's own child in a program that operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section.

G. No volunteer shall be permitted to serve in a licensed assisted living facility or licensed adult day care center without the permission or under the supervision of a person who has received a clearance pursuant to this section.

H. Further dissemination of the background check information is prohibited other than to the Commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

I. A licensed assisted living facility shall notify and provide all students a copy of the provisions of this article prior to or upon enrollment in a certified nurse aide program operated by such assisted living facility.

J. The provisions of this section shall not apply to any children's residential facility licensed pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements contained in § 63.2-1726.

K. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

§ 63.2-1721. Background check upon application for licensure or registration as child welfare agency; background check of foster or adoptive parents approved by child-placing agencies and family day homes approved by family day systems; penalty.

A. Upon application for licensure or registration as a child welfare agency, (i) all applicants; (ii) agents at the time of application who are or will be involved in the day-to-day operations of the child welfare agency or who are or will be alone with, in control of, or supervising one or more of the children; and (iii) any other adult living in the home of an applicant for licensure or registration as a family day home shall undergo a background check. In addition, foster or adoptive parents requesting approval by child-placing agencies and operators of family day homes requesting approval by family day systems, and any other adult residing in the family day home or existing employee or volunteer of the family day home, shall undergo background checks pursuant to subsection B prior to their approval.

B. Background checks pursuant to this section require:

1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and whether or not the person has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. A criminal history record check through the Central Criminal Records Exchange pursuant to § 19.2-389; and

3. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

C. The character and reputation investigation pursuant to § 63.2-1702 shall include background checks pursuant to subsection B of persons specified in subsection A. The applicant shall submit the background check information required in subsection B to the Commissioner's representative prior to issuance of a license, registration or approval. The applicant shall provide an original criminal record clearance with respect to offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision B 1 shall be guilty of a Class 1 misdemeanor. If any person specified in subsection A required to have a background check has any offense as defined in § 63.2-1719, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to the exception in subsection E, (i) the Commissioner shall not issue a license or registration to a child welfare agency; (ii) a child-placing agency shall not approve an adoptive or foster home; or (iii) a family day system shall not approve a family day home.

D. No person specified in subsection A shall be involved in the day-to-day operations of the child welfare agency or shall be alone with, in control of, or supervising one or more of the children without first having completed background checks pursuant to subsection B.

E. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive parent an applicant convicted of not more than one misdemeanor as set out in § 18.2-57 not involving abuse, neglect or moral turpitude, provided ten years have elapsed following the conviction.

F. If an applicant is denied licensure, registration or approval because of information from the central registry or convictions appearing on his criminal history record, the Commissioner shall provide a copy of the information obtained from the central registry or the Central Criminal Record Exchange

or both to the applicant.

G. Further dissemination of the background check information is prohibited other than to the Commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

H. The provisions of this section referring to a sworn statement or affirmation and to prohibitions on the issuance of a license for any offense shall not apply to any children's residential facility licensed pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements contained in § 63.2-1726.

§ 63.2-1722. Revocation or denial of renewal based on background checks; failure to obtain background check.

A. The Commissioner may revoke or deny renewal of a license or registration of a child welfare agency, an assisted living facility or adult day care center, a child-placing agency may revoke the approval of a foster home, and a family day system may revoke the approval of a family day home if the assisted living facility, adult day care center, child welfare agency, foster home or approved family day home has knowledge that a person specified in §§ 63.2-1720 and 63.2-1721 required to have a background check has an offense as defined in § 63.2-1719, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to the exceptions in subsection B of § 63.2-1720 and subsection E of § 63.2-1721, and the facility, center or agency refuses to separate such person from employment or service.

B. Failure to obtain background checks pursuant to §§ 63.2-1720 and 63.2-1721 shall be grounds for denial or revocation of a license, registration or approval. No violation shall occur if the assisted living facility, adult day care center or child welfare agency has applied for the background check timely and it has not been obtained due to administrative delay. The provisions of this section shall be enforced by the Department.

§ 63.2-1723. Child welfare agencies; criminal conviction and waiver.

A. Any person who seeks to operate, volunteer or work at a child welfare agency and who is disqualified because of a criminal conviction or a criminal conviction in the background check of any other adult living in a family day home regulated by the Department, pursuant to §§ 63.2-1720, 63.2-1721 and 63.2-1724, may apply in writing for a waiver from the Commissioner. The Commissioner may grant a waiver if the Commissioner determines that (i) the person is of good moral character and reputation and (ii) the waiver would not adversely affect the safety and well-being of children in the person's care. The Commissioner shall not grant a waiver to any person who has been convicted of a barrier crime as defined in § 63.2-1719. However, the Commissioner may grant a waiver to a family day home regulated by the Department if any other adult living in the home of the applicant or provider has been convicted of not more than one misdemeanor offense under § 18.2-57 or § 18.2-57.2, provided (a) five years have elapsed following the conviction and (b) the Department has conducted a home study that includes, but is not limited to, (1) an assessment of the safety of children placed in the home and (2) a determination that the offender is now a person of good moral character and reputation. The waiver shall not be granted if the adult living in the home is an assistant or substitute provider or if such adult has been convicted of a misdemeanor offense under both §§ 18.2-57 and 18.2-57.2. Any waiver granted under this section shall be available for inspection by the public. The child welfare agency shall notify in writing every parent and guardian of the children in its care of any waiver granted for its operators, employees or volunteers.

B. The Board shall adopt regulations to implement the provisions of this section.

§ 63.2-1724. Records check by unlicensed child day center; penalty.

Any child day center that is exempt from licensure pursuant to § 63.2-1716 shall require a prospective employee or volunteer or any other person who is expected to be alone with one or more children enrolled in the child day center to obtain within thirty days of employment or commencement of volunteer service, a search of the central registry maintained pursuant to § 63.2-1515 on any founded complaint of child abuse or neglect and a criminal records check as provided in subdivision A 11 of § 19.2-389 and shall refuse employment or service to any person who has any offense defined in § 63.2-1719. Such center shall also require a prospective employee or volunteer to provide a sworn statement or affirmation disclosing whether or not the applicant has ever been (i) the subject of a founded complaint of child abuse or neglect, or (ii) convicted of a crime or is the subject of pending criminal charges for any offense within the Commonwealth or any equivalent offense outside the Commonwealth. For purposes of this section, convictions shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would have been a felony if committed by an adult within or outside the Commonwealth. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor. If an applicant is denied employment or service because of information from the central registry or convictions appearing on his criminal history record, the child day center shall provide a copy of the information obtained from the

central registry or Central Criminal Records Exchange or both to the applicant. Further dissemination of the information provided to the facility is prohibited.

The provisions of this section referring to volunteers shall apply only to volunteers who will be alone with any child in the performance of their duties and shall not apply to a parent-volunteer of a child attending the child day center whether or not such parent-volunteer will be alone with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children which includes the parent-volunteer's own child, in a program which operates no more than four hours per day, where the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section.

§ 63.2-1725. Records checks of child day centers or family day homes receiving federal, state or local child care funds; penalty.

Whenever any child day center or family day home that has not met the requirements of §§ 63.2-1720, 63.2-1721 and 63.2-1724 applies to enter into a contract with a local department to provide child care services to clients of the local department, the local department shall require a criminal records check pursuant to subdivision A 11 of § 19.2-389, as well as a search of the central registry maintained pursuant to § 63.2-1515, on any child abuse or neglect investigation, of the applicant; any employee; prospective employee; volunteers; agents involved in the day-to-day operation; all agents who are alone with, in control of, or supervising one or more of the children; and any other adult living in a family day home. The applicant shall provide the local department with copies of these records checks. The child day center or family day home shall not be permitted to enter into a contract with a local department for child care services when an applicant; any employee; a prospective employee; a volunteer, an agent involved in the day-to-day operation; an agent alone with, in control of, or supervising one or more children; or any other adult living in a family day home has any offense as defined in § 63.2-1719. The child day center or family day home shall also require the above individuals to provide a sworn statement or affirmation disclosing whether or not the person has ever been (i) the subject of a founded case of child abuse or neglect or (ii) convicted of a crime or is the subject of any pending criminal charges within the Commonwealth or any equivalent offense outside the Commonwealth. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor. If a person is denied employment or work because of information from the central registry or convictions appearing on his criminal history record, the child day center or family day program shall provide a copy of such information obtained from the central registry or Central Criminal Records Exchange or both to the person. Further dissemination of the information provided to the facility, beyond dissemination to the local department, is prohibited.

§ 63.2-1726. Background check required; children's residential facilities.

A. As a condition of employment, volunteering or providing services on a regular basis, every children's residential facility that is regulated or operated by the Departments of Social Services; Education; Military Affairs; or Mental Health, Mental Retardation and Substance Abuse Services shall require any individual who (i) accepts a position of employment at such a facility who was not employed by that facility prior to July 1, 1994, (ii) volunteers for such a facility on a regular basis and will be alone with a juvenile in the performance of his duties who was not a volunteer at such facility prior to July 1, 1994, or (iii) provides contractual services directly to a juvenile for such facility on a regular basis and will be alone with a juvenile in the performance of his duties who did not provide such services prior to July 1, 1994; to submit to fingerprinting and to provide personal descriptive information, to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant. The children's residential facility shall inform the applicant that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made of the applicant's fitness to have responsibility for the safety and well-being of children. The applicant shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been convicted of or is the subject of pending charges for any offense within or outside the Commonwealth. Prior to permitting an applicant to begin his duties, the children's residential facility shall obtain the statement or affirmation from the applicant and shall submit the applicant's fingerprints and personal descriptive information to the Central Criminal Records Exchange.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall forward it to the state agency which operates or regulates the children's residential facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant's record lacking disposition data, conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The state agency shall report to the children's facility whether the applicant meets the criteria to have responsibility for the safety and well-being of

children based on whether or not the applicant has ever been convicted of or is the subject of pending charges for the following crimes: murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, abduction for immoral purposes as set out in § 18.2-48, assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, extortion by threat as set out in § 18.2-59, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2, possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, pandering as set out in § 18.2-355, crimes against nature involving children as set out § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, as set out in § 18.2-379, or an equivalent offense in another state. If the applicant is denied employment, or the opportunity to volunteer or provide services at a children's residential facility because of information appearing on his criminal history record, and the applicant disputes the information upon which the denial was based, upon written request of the applicant the state agency shall furnish the applicant the procedures for obtaining his criminal history record from the Federal Bureau of Investigation. If the applicant has been permitted to provide services pending receipt of the report, the children's residential facility is not precluded from suspending the applicant from his position or denying the applicant unsupervised access to clients pending a final determination of the applicant's fitness to have responsibility for the safety and well-being of children. The information provided to the children's residential facility shall not be disseminated except as provided in this section.

B. Those individuals listed in clauses (i), (ii) and (iii) of subsection A shall also authorize the children's residential facility to obtain a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The applicant shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been the subject of a founded case of child abuse or neglect within or outside the Commonwealth. The children's residential facility shall submit the request for information to the central registry prior to permitting an applicant to begin his duties. The children's residential facility shall obtain a copy of the information from the central registry within twenty-one days of the applicant beginning his duties. The provisions of this subsection also shall apply to every residential facility for juveniles which is regulated or operated by the Department of Juvenile Justice.

C. The Boards of Social Services; Education; Juvenile Justice; and Mental Health, Mental Retardation and Substance Abuse Services, and the Department of Military Affairs, may adopt regulations to comply with the provisions of this section. Copies of any information received by a children's residential facility pursuant to this section shall be available to the agency that regulates or operates such facility but shall not be disseminated further. The cost of obtaining the criminal history record and the central registry information shall be borne by the employee or volunteer unless the children's residential facility, at its option, decides to pay the cost.

§ 63.2-1727. Sex offender or child abuser prohibited from operating or residing in family day home.

It shall be unlawful for any person to operate a family day home if he, or if he knows that any other person who resides in the home, has been convicted of a felony in violation of §§ 18.2-48, 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-355, 18.2-361, 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-371.1 or § 18.2-374.1, or is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. A violation of this section shall be punishable as a Class 1 misdemeanor.

Article 4.

Complaints Received from Consumers and the Public.

§ 63.2-1728. Establishment of toll-free telephone line for complaints; investigation on receipt of complaints.

With such funds as are appropriated for this purpose, the Commissioner shall establish a toll-free telephone line to respond to complaints regarding operations of assisted living facilities, adult day care centers and child welfare agencies. Upon receipt of a complaint concerning the operation of an assisted living facility, adult day care center or child welfare agency, regardless of whether the program is subject to licensure, the Commissioner shall, for good cause shown, cause an investigation to be made, including on-site visits as he deems necessary, of the activities, services, records and facilities. The assisted living facility, adult day care center or child welfare agency shall afford the Commissioner reasonable opportunity to inspect all of the operator's activities, services, records and facilities and to interview its agents and employees and any child or other person within its custody or control.

Whenever an assisted living facility, adult day care center or child welfare agency subject to inspection under this section is determined by the Commissioner to be in noncompliance with the provisions of this subtitle or with regulations adopted pursuant to this subtitle, the Commissioner shall give reasonable notice to the assisted living facility, adult day care center or child welfare agency of the nature of its noncompliance and may thereafter take appropriate action as provided by law, including a suit to enjoin the operation of the assisted living facility, adult day care center or child welfare agency.

§ 63.2-1729. Confidentiality of complainant's identity.

Whenever the Department conducts inspections and investigations in response to complaints received from the public, the identity of the complainant and the identity of any resident, participant or child who is the subject of the complaint, or identified therein, shall be confidential and shall not be open to inspection by members of the public. Identities of the complainant and resident, participant or child who is the subject of the complaint shall be revealed only if a court order so requires. Nothing contained herein shall prevent the Department, in its discretion, from disclosing to the assisted living facility, adult day care center or child welfare agency the nature of the complaint or the identity of the resident, participant or child who is the subject of the complaint. Nothing contained herein shall prevent the Department or its employees from making reports under Chapter 15 (§ 63.2-1500 et seq.) of this title or Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of this title. If the Department intends to rely, in whole or in part, on any statements made by the complainant, at any administrative hearing brought against the assisted living facility, adult day care center or child welfare agency, the Department shall disclose the identity of the complainant to the assisted living facility, adult day care center or child welfare agency a reasonable time in advance of such hearing.

§ 63.2-1730. Retaliation or discrimination against complainants.

No assisted living facility, adult day care center or child welfare agency may retaliate or discriminate in any manner against any person who (i) in good faith complains or provides information to, or otherwise cooperates with, the Department or any other agency of government or any person or entity operating under contract with an agency of government, having responsibility for protecting the rights of residents of assisted living facilities, participants in adult day care centers or children in child welfare agencies, (ii) attempts to assert any right protected by state or federal law, or (iii) assists any person in asserting such right.

§ 63.2-1731. Retaliation against reports of child or adult abuse or neglect.

No assisted living facility, adult day care center or child welfare agency may retaliate in any manner against any person who in good faith reports adult or child abuse or neglect pursuant to Chapter 15 (§ 63.2-1500 et seq.) of this title or Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of this title.

Article 5.

Regulations and Interdepartmental Cooperation.

§ 63.2-1732. Regulations for assisted living facilities.

A. The Board shall have the authority to adopt and enforce regulations to carry out the provisions of this subtitle and to protect the health, safety, welfare and individual rights of residents of assisted living facilities and to promote their highest level of functioning. Such regulations shall take into consideration cost constraints of smaller operations in complying with such regulations.

B. Regulations shall include standards for staff qualifications and training; facility design, functional design and equipment; services to be provided to residents; administration of medicine; allowable medical conditions for which care can be provided; and medical procedures to be followed by staff, including provisions for physicians' services, restorative care, and specialized rehabilitative services.

C. Regulations for medical procedures in assisted living facilities shall be developed in consultation with the State Board of Health and adopted by the Board, and compliance with these regulations shall be determined by Department of Health or Department inspectors as provided by an interagency agreement between the Department and the Department of Health.

§ 63.2-1733. Regulations for adult day care centers.

A. The Board shall have the authority to adopt and enforce regulations to carry out the provisions of this subtitle and to protect the health, safety, welfare, and individual rights of participants of adult day care centers and to promote their highest level of functioning.

B. Regulations shall include standards for care and services to be provided to participants; administration of medication; staffing; staff qualifications and training; and facility design, construction, and equipment.

§ 63.2-1734. Regulations for child welfare agencies.

The Board, or in the case of child day centers, the Child Day-Care Council, shall adopt regulations for the activities, services and facilities to be employed by persons and agencies required to be licensed under this subtitle, which shall be designed to ensure that such activities, services and facilities are conducive to the welfare of the children under the custody or control of such persons or agencies.

Such regulations shall be developed in consultation with representatives of the affected entities and

shall include, but need not be limited to, matters relating to the sex, age, and number of children and other persons to be maintained, cared for, or placed out, as the case may be, and to the buildings and premises to be used, and reasonable standards for the activities, services and facilities to be employed. Such limitations and standards shall be specified in each license and renewal thereof. Such regulations shall not require the adoption of a specific teaching approach or doctrine.

§ 63.2-1735. Child Day-Care Council created; members; terms; duties.

The Child Day-Care Council is hereby continued. Its members shall be appointed by the Governor and serve without compensation. The members of the Council shall consist of two nonprofit child day center operators; three private for-profit child day center operators; one representative from each of the Departments of Social Services, Health, Education, Fire Programs, and Housing and Community Development; one pediatric health professional; one child development specialist; one parent consumer; one legal professional; one representative of the Virginia Council for Private Education; and one representative each of a child day center offering a seasonal program emphasizing outdoor activities, a private child day center offering a half-day nursery school program, and a local governing body all of which operate programs required to be licensed under this chapter. The membership of the Council shall also include such representatives of state agencies as advisory members as the Governor deems necessary. The Governor shall designate a member of the Council to serve as chairman.

The members of the Council shall be appointed for four-year terms, except appointments to fill vacancies shall be for the unexpired term.

The Council shall adopt regulations for licensure and operation of child day centers in the Commonwealth in accordance with the regulations referred to in § 63.2-1734.

The Council shall adopt regulations in collaboration with the Virginia Recreation and Park Society and the Department of Mental Health, Mental Retardation and Substance Abuse Services for therapeutic recreation programs.

All staff and other support services required by the Council shall be provided by the Department.

§ 63.2-1736. Interagency agreements; cooperation of Department with other departments.

The Department is authorized to enter into interagency agreements with other state agencies to develop and implement regulations. Any state agency identified by the Department as appropriate to include in an interagency agreement shall participate in the development and implementation of the agreement. The Department shall assist and cooperate with other state departments in fulfilling their respective inspection responsibilities and in coordinating the regulations involving inspections. The Board may adopt regulations allowing the Department to so assist and cooperate with other state departments.

§ 63.2-1737. Cooperation of Department with other state departments concerning children's residential facilities.

Notwithstanding any other provisions of this subtitle, the Department shall cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in such licensing and certification. The Board may adopt regulations for the interdepartmental regulation of children's residential facilities that shall allow the Department to assist and cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in such licensing and certification. Notwithstanding any other provisions of this chapter, licenses issued to children's residential facilities pursuant to cooperative efforts described in this section may be issued for periods of up to thirty-six successive months.

Notwithstanding any other provisions of this chapter, any facility licensed by the Commissioner as a child-caring institution as of January 1, 1987, and that receives no public funds shall be licensed under minimum standards for licensed child-caring institutions as adopted by the Board and in effect on January 1, 1987. Effective January 1, 1987, all children's residential facilities shall be licensed under the interdepartmental regulations for children's residential facilities.

CHAPTER 18.
FACILITIES AND PROGRAMS.
Article 1.
Assisted Living Facilities.

§ 63.2-1800. Licensure requirements.

A. Each license shall indicate whether the facility is licensed to provide residential living care or residential living and assisted living care.

B. Any facility licensed exclusively as an assisted living facility shall not use in its title the words "convalescent," "health," "hospital," "nursing," "sanatorium," or "sanitarium," nor shall such words be used to describe the facility in brochures, advertising, or other marketing material. No facility shall advertise or market a level of care that it is not licensed to provide. Nothing in this subsection shall prohibit the facility from describing services available in the facility.

C. Upon initial application for a license, any person applying to operate an assisted living facility who has not previously owned or managed or does not currently own or manage such a facility shall be required to undergo training by the Commissioner. The training programs shall focus on health and safety regulations and resident rights as they pertain to assisted living facilities and shall be completed by the owner or administrator prior to the granting of an initial license. Such training shall be required of those owners and currently employed administrators of an assisted living facility at the time of initial application for a license. The Commissioner may also approve training programs provided by other entities and allow owners or administrators to attend such approved training programs in lieu of training by the Commissioner. The Commissioner may also approve for licensure applicants who meet requisite experience criteria as established by the Board. The Commissioner may, at his discretion, issue a license conditioned upon the owner or administrator's completion of the required training.

§ 63.2-1801. Access to assisted living facilities by community services boards and behavioral health authorities.

All assisted living facilities shall provide reasonable access to staff or contractual agents of community services boards, local government departments with policy-advisory community services boards or behavioral health authorities as defined in Title 37.1 for the purposes of (i) assessing or evaluating, (ii) providing case management or other services or assistance, or (iii) monitoring the care of clients residing in the facility. Such staff or contractual agents also shall be given reasonable access to other facility residents who have previously requested their services.

§ 63.2-1802. Safe, secure environments for residents with serious cognitive impairments.

Assisted living facilities may provide safe, secure environments for residents with serious cognitive impairments due to a primary diagnosis of dementia if they comply with the Board's regulations governing such placement. The Board's regulations shall define (i) serious cognitive impairment, which shall include, but not be limited to, a physician assessment and (ii) safe, secure environment. Prior to placing a resident with a serious cognitive impairment due to a primary diagnosis of dementia in a safe, secure environment, an assisted living facility shall obtain the written approval of one of the following persons, in the specified order of priority: (a) the resident, if capable of making an informed decision; (b) a guardian or legal representative for the resident; however, such an appointment shall not be required in order that written approval may be obtained; (c) a relative authorized pursuant to the Board's regulations to act as the resident's representative; or (d) an independent physician who is skilled and knowledgeable in the diagnosis and treatment of dementia, if a guardian, legal representative or relative is unavailable. Such written approval shall be retained in the resident's file.

§ 63.2-1803. Staffing of assisted living facilities.

A. An administrator is any person meeting the qualifications for administrator of an assisted living facility, pursuant to regulations adopted by the Board. Any person meeting the qualifications for a licensed nursing home administrator under § 54.1-3103 shall be deemed qualified to (i) serve as an administrator of an assisted living facility and (ii) serve as the administrator of both an assisted living facility and a licensed nursing home, provided the assisted living facility and licensed nursing home are part of the same building.

B. The assisted living facility shall have adequate and sufficient staff to provide services to attain and maintain (i) the physical, mental and psychosocial well-being of each resident as determined by resident assessments and individual plans of care and (ii) the physical safety of the residents on the premises. Upon admission and upon request, the assisted living facility shall provide in writing a description of the types of staff working in the facility and the services provided, including the hours such services are available.

§ 63.2-1804. Uniform assessment instrument.

A uniform assessment instrument setting forth a resident's care needs shall be completed for all residents upon admission and at subsequent intervals as determined by Board regulation. No uniform assessment instrument shall be required to be completed upon admission if a uniform assessment instrument was completed by a case manager or other qualified assessor within ninety days prior to such admission to the assisted living facility unless there has been a change in the resident's condition within that time which would affect the admission. Uniform assessment instruments shall not be required to be completed more often than once every twelve months on individuals residing in assisted living facilities except that uniform assessment instruments shall be completed whenever there is a change in the resident's condition that appears to warrant a change in the resident's approved level of care. At the request of the assisted living facility, the resident's representative, the resident's physician, the Department or the local department, an independent assessment, using the uniform assessment instrument shall be completed to determine whether the resident's care needs are being met in the current placement. The resident's case manager or other qualified assessor shall complete the uniform assessment instrument for public pay residents or, upon request by the private pay resident, for private pay residents. Unless a private pay resident requests the uniform assessment instrument be completed by

a case manager or other qualified assessor, qualified staff of the assisted living facility or an independent private physician may complete the uniform assessment instrument for private pay residents; however, for private pay residents, social and financial information which is not relevant because of the resident's payment status shall not be required. The cost of administering the uniform assessment instrument pursuant to this section shall be borne by the entity designated pursuant to Board regulations. Upon receiving the uniform assessment instrument prior to admission of a resident, the assisted living facility administrator shall provide written assurance that the facility has the appropriate license to meet the care needs of the resident at the time of admission.

§ 63.2-1805. Admissions and discharge.

A. The Board shall adopt regulations:

1. Governing admissions to assisted living facilities;

2. Establishing a process to ensure that residents admitted or retained in an assisted living facility receive the appropriate services and that, in order to determine whether a resident's needs can continue to be met by the facility and whether continued placement in the facility is in the best interests of the resident, each resident receives periodic independent reassessments and reassessments in the event of significant deterioration of the resident's condition;

3. Governing appropriate discharge planning for residents whose care needs can no longer be met by the facility;

4. Addressing the involuntary discharge of residents;

5. Requiring that residents are informed of their rights pursuant to § 63.2-1808 at the time of admission;

6. Establishing a process to ensure that any resident temporarily detained in an inpatient facility pursuant to § 37.1-67.1 is accepted back in the assisted living facility if the resident is not involuntarily committed pursuant to § 37.1-67.3; and

7. Requiring that each assisted living facility train all employees who are mandated to report adult abuse, neglect, or exploitation pursuant to § 63.2-1606 on such reporting procedures and the consequences for failing to make a required report.

B. Assisted living facilities shall not admit or retain individuals with any of the following conditions or care needs:

1. Ventilator dependency.

2. Dermal ulcers III and IV, except those stage III ulcers which are determined by an independent physician to be healing.

3. Intravenous therapy or injections directly into the vein except for intermittent intravenous therapy managed by a health care professional licensed in Virginia or as permitted in subsection C.

4. Airborne infectious disease in a communicable state, that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold.

5. Psychotropic medications without appropriate diagnosis and treatment plans.

6. Nasogastric tubes.

7. Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube or as permitted in subsection C.

8. Individuals presenting an imminent physical threat or danger to self or others.

9. Individuals requiring continuous licensed nursing care (seven-days-a-week, twenty-four-hours-a-day).

10. Individuals whose physician certifies that placement is no longer appropriate.

11. Unless the individual's independent physician determines otherwise, individuals who require maximum physical assistance as documented by the uniform assessment instrument and meet Medicaid nursing facility level-of-care criteria as defined in the State Plan for Medical Assistance. Maximum physical assistance means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument.

12. Individuals whose health care needs cannot be met in the specific assisted living facility as determined by the facility.

13. Such other medical and functional care needs of residents which the Board determines cannot properly be met in an assisted living facility.

C. Except for auxiliary grant recipients, at the request of the resident, and pursuant to regulations of the Board, care for the conditions or care needs defined in subdivisions B 3 and B 7 may be provided to a resident in an assisted living facility by a licensed physician, a licensed nurse under a physician's treatment plan or by a home care organization licensed in Virginia when the resident's independent physician determines that such care is appropriate for the resident.

D. In adopting regulations pursuant to subsections A, B and C, the Board shall consult with the Departments of Health and Mental Health, Mental Retardation and Substance Abuse Services.

§ 63.2-1806. Hospice care.

Notwithstanding § 63.2-1805, at the request of the resident, hospice care may be provided in an assisted living facility under the same requirements for hospice programs provided in Article 7 (§ 32.1-162.1 et seq.) of Chapter 5 of Title 32.1, if the hospice program determines that such program is appropriate for the resident.

§ 63.2-1807. Certification in cardiopulmonary resuscitation; do not resuscitate orders.

The owners or operators of any assisted living facility may provide that their employees who are certified in cardiopulmonary resuscitation (CPR) shall not be required to resuscitate any resident for whom a valid written order not to resuscitate in the event of cardiac or respiratory arrest has been issued by the attending physician and has been included in the resident's individualized service plan.

§ 63.2-1808. Rights and responsibilities of residents of assisted living facilities; certification of licensure.

A. Any resident of an assisted living facility has the rights and responsibilities enumerated in this section. The operator or administrator of an assisted living facility shall establish written policies and procedures to ensure that, at the minimum, each person who becomes a resident of the assisted living facility:

1. Is fully informed, prior to or at the time of admission and during the resident's stay, of his rights and of all rules and expectations governing the resident's conduct, responsibilities, and the terms of the admission agreement; evidence of this shall be the resident's written acknowledgment of having been so informed, which shall be filed in his record;

2. Is fully informed, prior to or at the time of admission and during the resident's stay, of services available in the facility and of any related charges; this shall be reflected by the resident's signature on a current resident's agreement retained in the resident's file;

3. Unless a committee or conservator has been appointed, is free to manage his personal finances and funds regardless of source; is entitled to access to personal account statements reflecting financial transactions made on his behalf by the facility; and is given at least a quarterly accounting of financial transactions made on his behalf when a written delegation of responsibility to manage his financial affairs is made to the facility for any period of time in conformance with state law;

4. Is afforded confidential treatment of his personal affairs and records and may approve or refuse their release to any individual outside the facility except as otherwise provided in law and except in case of his transfer to another care-giving facility;

5. Is transferred or discharged only when provided with a statement of reasons, or for nonpayment for his stay, and is given reasonable advance notice; upon notice of discharge or upon giving reasonable advance notice of his desire to move, shall be afforded reasonable assistance to ensure an orderly transfer or discharge; such actions shall be documented in his record;

6. In the event a medical condition should arise while he is residing in the facility, is afforded the opportunity to participate in the planning of his program of care and medical treatment at the facility and the right to refuse treatment;

7. Is not required to perform services for the facility except as voluntarily contracted pursuant to a voluntary agreement for services that states the terms of consideration or remuneration and is documented in writing and retained in his record;

8. Is free to select health care services from reasonably available resources;

9. Is free to refuse to participate in human subject experimentation or to be party to research in which his identity may be ascertained;

10. Is free from mental, emotional, physical, sexual, and economic abuse or exploitation; is free from forced isolation, threats or other degrading or demeaning acts against him; and his known needs are not neglected or ignored by personnel of the facility;

11. Is treated with courtesy, respect, and consideration as a person of worth, sensitivity, and dignity;

12. Is encouraged, and informed of appropriate means as necessary, throughout the period of stay to exercise his rights as a resident and as a citizen; to this end, he is free to voice grievances and recommend changes in policies and services, free of coercion, discrimination, threats or reprisal;

13. Is permitted to retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other residents;

14. Is encouraged to function at his highest mental, emotional, physical and social potential;

15. Is free of physical or mechanical restraint except in the following situations and with appropriate safeguards:

a. As necessary for the facility to respond to unmanageable behavior in an emergency situation which threatens the immediate safety of the resident or others;

b. As medically necessary, as authorized in writing by a physician, to provide physical support to a weakened resident;

16. Is free of prescription drugs except where medically necessary, specifically prescribed, and

supervised by the attending physician;

17. Is accorded respect for ordinary privacy in every aspect of daily living, including but not limited to the following:

a. In the care of his personal needs except as assistance may be needed;

b. In any medical examination or health-related consultations the resident may have at the facility;

c. In communications, in writing or by telephone;

d. During visitations with other persons;

e. In the resident's room or portion thereof; residents shall be permitted to have guests or other residents in their rooms unless to do so would infringe upon the rights of other residents; staff may not enter a resident's room without making their presence known except in an emergency or in accordance with safety oversight requirements included in regulations of the Board;

f. In visits with his spouse; if both are residents of the facility they are permitted but not required to share a room unless otherwise provided in the residents' agreements; and

18. Is permitted to meet with and participate in activities of social, religious, and community groups at his discretion unless medically contraindicated as documented by his physician in his medical record.

B. If the resident is unable to fully understand and exercise the rights and responsibilities contained in this section, the facility shall require that a responsible individual, of the resident's choice when possible, designated in writing in the resident's record, be made aware of each item in this section and the decisions that affect the resident or relate to specific items in this section; a resident shall be assumed capable of understanding and exercising these rights unless a physician determines otherwise and documents the reasons for such determination in the resident's record.

C. All established policies and procedures regarding the rights and responsibilities of residents shall be printed in at least twelve-point type and posted conspicuously in a public place in all assisted living facilities. The facility shall include in them the name and telephone number of the regional licensing supervisor of the Department, the Adult Protective Services' toll-free telephone number, as well as the toll-free telephone number for the Virginia Long-Term Care Ombudsman Program, any sub-state ombudsman program serving the area, and the toll-free number of the Department for the Rights of Virginians With Disabilities.

D. The facility shall make its policies and procedures for implementing this section available and accessible to residents, relatives, agencies, and the general public.

E. The provisions of this section shall not be construed to restrict or abridge any right which any resident has under law.

F. Each facility shall provide appropriate staff training to implement each resident's rights included in this section.

G. The Board shall adopt regulations as necessary to carry out the full intent of this section.

H. It shall be the responsibility of the Commissioner to ensure that the provisions of this section are observed and implemented by assisted living facilities as a condition to the issuance, renewal, or continuation of the license required by this article.

Article 2.

Child Welfare Agencies.

§ 63.2-1809. Regulated child day programs to require proof of child identity and age; report to law-enforcement agencies.

A. Upon enrollment of a child in a regulated child day program, such child day program shall require information from the person enrolling the child regarding previous child day care and schools attended by the child. The regulated child day program shall also require that the person enrolling the child present the regulated child day program with the proof of the child's identity and age.

B. For purposes of this section:

"Proof of identity" means a certified copy of a birth certificate or other reliable proof of the child's identity and age.

"Regulated child day program" is one in which a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of thirteen for less than a twenty-four-hour period that is licensed pursuant to § 63.2-1701, voluntarily registered pursuant to § 63.2-1704, certified as a preschool or nursery school program pursuant to § 63.2-1717, exempted from licensure as a child day center operated by a religious institution pursuant to § 63.2-1716, or approved as a family day home by a licensed family day system.

C. If the parent, guardian, or other person enrolling the child in a regulated child day program for longer than two consecutive days or other pattern of regular attendance does not provide the information required by subsection A within seven business days of initial attendance, such child day program shall immediately notify the local law-enforcement agency in its jurisdiction of such failure to provide the requested information.

D. Upon receiving notification of such failure to provide the information required by subsection A,

the law-enforcement agency shall, if available information warrants, immediately submit an inquiry to the Missing Children Information Clearinghouse and, with the assistance of the local department, if available information warrants, conduct the appropriate investigation to determine whether the child is missing.

E. The Board shall adopt regulations to implement the provisions of this act.

§ 63.2-1810. Dual licenses for certain child day centers.

Any facility licensed as a child day center which also meets the requirements for a license as a summer camp by the Department of Health under the provisions of § 35.1-18 shall be entitled to a summer camp license. Such a facility shall comply with all of the regulations adopted by the Board or Child Day-Care Council, whichever is applicable, and the State Board of Health for each such license.

§ 63.1-1811. Asbestos inspection required for child day centers.

The Commissioner shall not issue a license to any child day center which is located in a building built prior to 1978 until he receives a written statement that the building has been inspected for asbestos, as defined by § 2.2-1162, and in accordance with the regulations for initial asbestos inspections pursuant to the Asbestos Hazard Emergency Response Act, 40 CFR Pt. 763 - Asbestos Containing Materials in Schools. The inspection shall be conducted by personnel competent to identify the presence of asbestos and licensed in Virginia as an asbestos inspector and as an asbestos management planner pursuant to Chapter 5 (§ 54.1-500 et seq.) of Title 54.1. The written statement shall state that either (i) no asbestos was detected or (ii) asbestos was detected and response actions to abate any risk to human health have been completed or (iii) asbestos was detected and response actions to abate any risk to human health have been recommended in accordance with a specified schedule and plan pursuant to applicable state and federal statutes and regulations. The statement shall include identification of any significant hazard areas, the date of the inspection and be signed by the person who inspected for the asbestos. If asbestos was detected, an operations and maintenance plan shall be developed in accordance with the regulations of the Asbestos Hazard Emergency Response Act and the statement shall be signed by the person who prepared the operations and maintenance plan. Any inspection, preparation of an operations and maintenance plan or response action shall be performed by competent personnel who have been licensed in accordance with the provisions of Chapter 5 of Title 54.1.

When asbestos has been detected, the applicant for licensure shall also submit to the Commissioner a written statement that response actions to abate any risk to human health have been or will be initiated in accordance with a specified schedule and plan as recommended by an asbestos management planner licensed in Virginia. This statement shall be signed by the applicant for licensure.

The written statements required by this section shall be submitted for approval to the Commissioner's representative prior to issuance of a license. The provisions of this section shall not apply to child day centers located in buildings required to be inspected pursuant to Article 5 (§ 2.2-1162 et seq.) of Chapter 11 of Title 2.2.

§ 63.2-1812. Delay in acting on application, or in notification.

In case the Commissioner fails to take final action upon an application for a license within sixty days after the application is made, either by way of issuance or refusal, or fails within such time to notify the applicant thereof, it shall be lawful for the applicant to engage in the operations or activities for which the license is desired, until the Commissioner has taken final action and notified the applicant thereof; however, no application shall be deemed made until all the required information is submitted in the form prescribed by the Commissioner. The provisions of this section shall not apply to a children's residential facility, child-placing agency, or independent foster home.

§ 63.2-1813. Visitation by parents or guardians in child day programs.

A custodial parent or guardian shall be admitted to any child day program. For purposes of this section, "child day program" is one in which a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of thirteen for less than a twenty-four-hour period, regardless of whether it is licensed. Such right of admission shall apply only while the child is in the child day program.

§ 63.2-1814. Public funds to be withheld for serious or persistent violations.

The Board and the State Board of Education may adopt policies, as permitted by state and federal law, to restrict the eligibility of a licensed child welfare agency to receive or continue to receive funds when such agency is found to be in serious or persistent violation of regulations.

§ 63.2-1815. Subtitle not to apply to certain schools and institutions.

None of the provisions of this subtitle shall apply to any private school or charitable institution incorporated under the laws of this Commonwealth, which is located West of Sandy Ridge and on the watersheds of Big Sandy River, and to which no contributions are made by the Commonwealth or any agency thereof.

§ 63.2-1816. Municipal and county appropriations; contracts.

The governing bodies of the several cities and counties of this Commonwealth may, in their discretion, appropriate to incorporated charitable organizations licensed by the Commissioner for the purpose of receiving and caring for children, or placing or boarding them in private homes, such sums as to them may seem proper, for the maintenance and care of such dependent children as the charitable organizations may receive from the respective cities and counties. The governing body of any county may make contracts with such organizations.

§ 63.2-1817. Acceptance and control over children by licensed child-placing agency, children's residential facility or independent foster home.

A licensed child-placing agency, children's residential facility or independent foster home shall have the right to accept, for any purpose not contrary to the limitations contained in its license, such children as may be entrusted or committed to it by the parents, guardians, relatives or other persons having legal custody thereof, or committed by any court of competent jurisdiction. The agency, facility or home shall, within the terms of its license and the agreement or order by which such child is entrusted or committed to its care, have custody and control of every child so entrusted or committed and accepted, until he is lawfully discharged, has been adopted, or has attained his majority.

An agency that is licensed as a child-placing agency by the Department and certified as a proprietary school for students with disabilities by the Department of Education shall not be required to take custody of any child placed in its special education program but shall enter into a placement agreement with the parents or guardian of the child concerning the respective responsibilities of the agency and the parents or guardian for the care and control of the child. Such an agency shall conform with all other legal requirements of licensed child-placing agencies including the provisions of §§ 16.1-281 and 16.1-282.

A licensed private child-placing agency may accept placement of a child through an agreement with a local department where the local department retains legal custody of the child or where the parents or legal guardian of the child retain legal custody but have entered into a placement agreement with the local department or the public agency designated by the community policy and management team.

Whenever a licensed child-placing agency accepts legal custody of a child, the agency shall comply with §§ 16.1-281 and 16.1-282.

A children's residential facility licensed as a temporary emergency shelter may accept a child for placement provided that verbal agreement for placement is obtained from the parents, guardians, relatives or other persons having legal custody thereof, within eight hours of the child's arrival at the facility and provided that a written placement agreement is completed and signed by the legal guardian and the facility representative within twenty-four hours of the child's arrival or by the end of the next business day after the child's arrival.

§ 63.2-1818. Reports to Commissioner.

Upon the entry of a final order of adoption involving a child placed by a licensed child-placing agency, that agency shall transmit to the Commissioner all reports and collateral information in connection with the case which shall be preserved by the Commissioner in accordance with § 63.2-1246. Such agency may keep duplicate copies of such reports and collateral information or may obtain copies of such documents from the Commissioner at a reasonable fee as prescribed by the Board.

§ 63.2-1819. Where child-placing agencies may place children.

Any licensed child-placing agency may place or negotiate and arrange for the placement of children in any licensed children's residential facility, and, unless its license contains a limitation to the contrary, a licensed child-placing agency may also place or arrange for the placement of such persons in any suitable foster home or independent living placement.

Subtitle V.
Administrative Child Support.
CHAPTER 19.
CHILD SUPPORT ENFORCEMENT.
Article 1.
General Provisions.

§ 63.2-1900. Definitions.

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

"Administrative order" or "administrative support order" means a noncourt-ordered legally enforceable support obligation having the force and effect of a support order established by the court.

"Assignment of rights" means the legal procedure whereby an individual assigns support rights to the Commonwealth on behalf of a dependent child or spouse and dependent child.

"Authorization to seek or enforce a support obligation" means a signed authorization to the Commonwealth to seek or enforce support on behalf of a dependent child or a spouse and dependent child or on behalf of a person deemed to have submitted an application by operation of law.

"Court order" means any judgment or order of any court having jurisdiction to order payment of

support or an order of a court of comparable jurisdiction of another state ordering payment of a set or determinable amount of support moneys.

"Custodial parent" means the natural or adoptive parent with whom the child resides; a stepparent or other person who has physical custody of the child and with whom the child resides; or a local board that has legal custody of a child in foster care.

"Debt" means the total unpaid support obligation established by court order, administrative process or by the payment of public assistance and owed by a noncustodial parent to either the Commonwealth or to his dependent(s).

"Dependent child" means any person who meets the eligibility criteria set forth in § 63.2-602, whose support rights have been assigned or whose authorization to seek or enforce a support obligation has been given to the Commonwealth and whose support is required by Titles 16.1 and 20.

"Employee" means any individual receiving income.

"Employer" means the source of any income.

"Financial institution" means a depository institution, an institution-affiliated party, any federal credit union or state credit union including an institution-affiliated party of such a credit union, and any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in this Commonwealth.

"Financial records" includes, but is not limited to, records held by employers showing income, profit sharing contributions and benefits paid or payable and records held by financial institutions, broker-dealers and other institutions and entities showing bank accounts, IRA and separate contributions, gross winnings, dividends, interest, distributive share, stocks, bonds, agricultural subsidies, royalties, prizes and awards held for or due and payable to a responsible person.

"Foreign support order" means any order issued outside of the Commonwealth by a court or tribunal as defined in § 20-88.32. "Health care coverage" means any plan providing hospital, medical or surgical care coverage for dependent children provided such coverage is available and can be obtained by a noncustodial parent at a reasonable cost.

"Income" means any periodic form of payment due an individual from any source and shall include, but not be limited to, income from salaries, wages, commissions, royalties, bonuses, dividends, severance pay, payments pursuant to a pension or retirement program, interest, trust income, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, veterans' benefits, spousal support, net rental income, gifts, prizes or awards.

"Mistake of fact" means an error in the identity of the payor or the amount of current support or arrearage.

"Net income" means that income remaining after the following deductions have been taken from gross income: federal income tax, state income tax, federal income compensation act benefits, any union dues where collection thereof is required under federal law, and any other amounts required by law.

"Noncustodial parent" means a responsible person who is or may be obligated under Virginia law for support of a dependent child or child's caretaker.

"Obligee" means (i) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered, (ii) a state or political subdivision to which the rights under a duty of support or support order have been assigned or that has independent claims based on financial assistance provided to an individual obligee, or (iii) an individual seeking a judgment determining parentage of the individual's child.

"Obligor" means an individual, or the estate of a decedent, who (i) owes or is alleged to owe a duty of support, (ii) is alleged but has not been adjudicated to be a parent of a child, or (iii) is liable under a support order.

"Payee" means any person to whom spousal or child support is to be paid.

"Reasonable cost" pertaining to health care coverage means available through employers, unions or other groups without regard to service delivery mechanism.

§ 63.2-1901. Purpose of chapter; powers and duties of the Department.

It is the purpose of this chapter to promote the efficient and accurate collection, accounting and receipt of support for financially dependent children and their custodians, and to further the effective and timely enforcement of such support while ensuring that all functions in the Department are appropriate or necessary to comply with applicable federal law.

When so ordered by the court or the Department, support for financially dependent children and their custodians shall be paid by obligors to the Department's State Disbursement Unit (SDU) or in district offices located within the Commonwealth for processing by the SDU. The Department shall have authority to enter into contracts with any appropriate public or private entities to enforce, collect, account for and disburse payments for child or spousal support.

The Division of Child Support Enforcement within the Department shall be authorized to issue

payments to implement the disbursement of funds pursuant to the provisions of this section.

§ 63.2-1902. Central unit for information and administration; cooperation enjoined.

The Department is authorized and directed to establish a central unit within the Department to administer the Title IV, D State Plan according to 45 C.F.R. 302.12. The central unit shall have the statewide jurisdiction and authority to:

1. Establish a registry for the receipt of information;

2. Answer interstate inquiries concerning noncustodial parents;

3. Coordinate and supervise departmental activities in relation to noncustodial parents to ensure effective cooperation with law-enforcement agencies; and

4. Contract and enter into cooperative agreements with individuals and agencies including law-enforcement agencies, in order that they may assist the Department in its responsibilities.

The central unit within the Department shall supervise offices whose primary functions are:

a. Location of absent noncustodial parents;

b. Assessment of the ability of noncustodial parents to pay child or child and spousal support and to obtain health care coverage for dependent children;

c. Establishment, modification and enforcement of support obligations including health care coverage for dependent children, through administrative action;

d. Preparation of individual cases for court action existing under all laws of the Commonwealth;

e. Ensuring on a consistent basis that support continues in all cases in which support is assessed administratively or ordered by the court; and

f. Provision of its services in establishing paternity and establishing and enforcing support obligations equally to public-assisted and nonpublic-assisted families.

To effectuate the purposes of this section, the Commissioner may request and shall receive from state, county and local agencies within and without the Commonwealth, including but not limited to such agencies and entities responsible for vital records; tax and revenue; real and titled personal property; authorizations to engage in a business, trade, profession or occupation; employment security; motor vehicle licensing and registration; public assistance programs and corrections, all information and assistance as authorized by this chapter. Solely for the purposes of obtaining motor vehicle licensing and registration information from entities within and without the Commonwealth, the Division of Child Support Enforcement shall be deemed to be a criminal justice agency. With respect to individuals who owe child support or are alleged in a pending paternity proceeding to be a putative father, the Commissioner may request and shall receive the names and addresses of such individuals and the names and addresses of such individuals' employers as appearing in the customer records of public utilities, cable television companies and financial institutions. All state, county and city agencies, officers and employees shall cooperate in the location of noncustodial parents who have abandoned or deserted, or are failing to support, children and their custodial parents and shall on request supply the Department with all information on hand relative to the location, income, benefits and property of such noncustodial parents, notwithstanding any provision of law making such information confidential. A civil penalty not to exceed $1,000 may be assessed by the Commissioner for a failure to respond to a request for information made in accordance with this section.

Any public or private person, partnership, firm, corporation or association, any financial institution and any political subdivision, department or other entity of the Commonwealth who in good faith and in the absence of gross negligence, willful misconduct or breach of an ethical duty, provide information requested pursuant to this section shall be immune from liability, civil or criminal, that might otherwise result from the release of such information to the Department.

§ 63.2-1903. Authority to issue certain orders.

A. In the absence of a court order, the Department shall have the authority to issue orders directing the payment of child, and child and spousal support and, if available at reasonable cost as defined in § 63.2-1900, to require a provision for health care coverage for dependent children of the obligor, which shall include the requirements specified for employers pursuant to subdivision A 5 of § 20-79.3. Liability for child support shall be determined retroactively for the period measured from the date the order directing payment is delivered to the sheriff or process server for service upon the obligor.

In ordering the payment of child support, the Department shall set such support at the amount resulting from computation pursuant to the guideline set out in § 20-108.2, subject to the provisions of § 63.2-1918.

B. When a payee, as defined in § 63.2-1900, no longer has physical custody of a child, the Department shall have the authority to redirect child support payments to a custodial parent who has physical custody of the child when an assignment of rights has been made to the Department or an application for services has been made by such custodial parent with the Division of Child Support Enforcement.

C. The Department shall have the authority, upon notice from the Department of Medical Assistance

Services, to use any existing enforcement mechanisms provided by this chapter to collect the wages, salary, or other employment income or to withhold amounts from state tax refunds of any obligor who has not used payments received from a third party to reimburse, as appropriate, either the other parent of such child or the provider of such services, to the extent necessary to reimburse the Department of Medical Assistance Services.

D. The Department may order the obligor and payee to notify each other or the Department upon request of current gross income as defined in § 20-108.2 and any other pertinent information which may affect child support amounts. For good cause shown, the Department may order that such information be provided to the Department and made available to the parties for inspection in lieu of the parties' providing such information directly to each other. The Department shall record the social security number of each party or control number issued to a party by the Department of Motor Vehicles pursuant to § 46.2-342 in the Department's file of the case.

E. The Department shall develop procedures governing the method and timing of periodic review and adjustment of child support orders established or enforced or both pursuant to Title IV-D of the Social Security Act, as amended. At the request of either parent subject to the order or of a state child support enforcement agency, the Department shall initiate a review of such order every three years without requiring proof or showing of a change in circumstances, and shall initiate appropriate action to adjust such order in accordance with the provisions of § 20-108.2 and subject to the provisions of § 63.2-1918.

F. In order to provide essential information for whatever establishment or enforcement actions are necessary for the collection of child support, the Commissioner, the Director of the Division of Child Support Enforcement and district managers of Division of Child Support Enforcement offices shall have the right to (i) subpoena financial records of, or other information relating to, the noncustodial parent and obligee from any person, firm, corporation, association, or political subdivision or department of the Commonwealth and (ii) summons the noncustodial parent and obligee to appear in the Division's offices. The Commissioner, Director and district managers may also subpoena copies of state and federal income tax returns. The district managers shall be trained in the correct use of the subpoena process prior to exercising subpoena authority. A civil penalty not to exceed $1,000 may be assessed by the Commissioner for a failure to respond to a subpoena issued pursuant to this subsection.

G. In the absence of a court order, the Department may establish an administrative support order on an out-of-state obligor if the obligor and the obligee maintained a matrimonial domicile within the Commonwealth. The Department may also take action to enforce an administrative or court order on an out-of-state obligor. Service of such actions shall be in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329, or by certified mail, return receipt requested, in accordance with § 63.2-1917.

H. If a support order has been issued in another state but the obligor, the obligee, and the child now live in the Commonwealth, the Department may (i) enforce the order without registration, using all enforcement remedies available under this chapter and (ii) register the order in the appropriate tribunal of the Commonwealth for enforcement or modification.

§ 63.2-1904. Administrative support remedies available for individuals not receiving public assistance; fees.

The Department shall make available to those individuals not receiving public assistance, upon receipt of an authorization to seek or enforce a support obligation the same support services provided to recipients of public assistance. These services may include, but are not limited to:

1. Locating noncustodial parents to obtain child support;

2. Establishing paternity;

3. Establishing or modifying child support obligations, that shall include a provision for health care coverage for dependent children of the obligor; and

4. Enforcing and collecting child support obligations; however, the only support in arrears that may be enforced by administrative action is (i) arrearages accrued or accruing under a court order or decree or (ii) arrearages on an administrative order accruing from the entry of such administrative order.

No individual shall be required to obtain support services from the Department prior to commencing a judicial proceeding to establish, modify, enforce or collect a child support obligation.

The Board shall charge a fee of one dollar upon application for services pursuant to this section. At the option of the Department, the fee may be paid by the Department on behalf of all applicants.

The Department is further designated as the public entity responsible for implementing immediate income withholding pursuant to § 466 of the Social Security Act, as amended.

§ 63.2-1905. Establishment of State Case Registry.

The Department shall keep and maintain a State Case Registry (Registry) that contains case records of services provided by the Division of Child Support Enforcement, as well as each support order established or modified in the Commonwealth. Records contained in this Registry shall be promptly updated, maintained, and regularly monitored, and shall include (i) information on administrative

actions and administrative and judicial proceedings and orders relating to paternity establishment and support; (ii) information obtained from comparison with federal, state or local sources of information; (iii) information on support collections and distributions; and (iv) any other relevant information. The Supreme Court of Virginia shall report information concerning judicial proceedings and orders relating to paternity and support to the Department. The Department shall be permitted to disseminate Registry information for information comparisons with other state and federal agencies, and as may be required pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) and any regulations adopted thereto. Such information comparison activities shall include the following: (a) Federal Case Registry of Child Support Orders, (b) Federal Parent Locator Service, (c) Temporary Assistance for Needy Families and Medicaid, and (d) intrastate and interstate information comparisons.

§ 63.2-1906. Department may disclose information to Internal Revenue Services.

Upon approval of the Department of Health and Human Services, the Department may disclose to and keep the Internal Revenue Services of the Treasury of the United States advised of the names of all persons who are under legal obligation to support any dependent child or dependent children or their custodial parents and who are not doing so, to the end that the Internal Revenue Services may have available to it the names of such persons for review in connection with income tax returns and claims of dependencies made by persons filing income tax returns.

§ 63.2-1907. Child support enforcement; private contracts.

A. Pursuant to the authority granted in § 63.2-1901, child support enforcement field work administrative functions and central office payment processing functions in the Commonwealth may be performed by private entities. The Department shall supervise the administration of the child support enforcement program, let and monitor all contracts with private entities and ensure compliance with applicable state and federal laws and regulations. The Department may also enter into contracts with private collection agencies and other entities to effect the collection of child support arrearages. Contracts entered into pursuant to this section shall be in accordance with the applicable laws and regulations governing public entities pursuant to the Public Procurement Act (§ 2.2-4300 et seq.). Any contract to perform child support enforcement field work administrative functions and central office payment processing functions entered into by the Department shall contain a provision that the entity to whom the contract is awarded shall give employment preference to qualified persons whose employment with the Division of Child Support Enforcement is terminated as a result of the privatization of child support enforcement functions. Notwithstanding any other provision of law, when hiring to fill vacant positions within the Department, preference shall be given to qualified persons who are unable to obtain employment with an entity who is awarded a contract to perform child support enforcement field work administrative functions and central office payment processing functions pursuant to this section and whose employment with the Division of Child Support Enforcement is terminated as a result of the privatization of child support enforcement functions.

B. The Board shall establish guidelines to implement the Department's responsibilities under this section. Such guidelines shall specify procedures by which child support enforcement funding mechanisms authorized by state and federal law are allocated to fund central office and privatized child support enforcement functions.

C. By July 1 of each year, the Department shall submit a written report to the Governor and General Assembly with a detailed summary and evaluation of the privatization of child support enforcement programs.

Article 2.

Public Assistance.

§ 63.2-1908. Payment of public assistance for child or custodial parent constitutes debt to Department by noncustodial parents; limitations; Department subrogated to rights.

Any payment of public assistance money made to or for the benefit of any dependent child or children or their custodial parent creates a debt due and owing to the Department by the person or persons who are responsible for support of such children or custodial parent in an amount equal to the amount of public assistance money so paid. However, if a custodial parent receives TANF payments for some of the custodial parent's dependent children but not for other children pursuant to § 63.2-604, the custodial parent shall receive the total amount of support collected for the children for whom no TANF benefits are received. Such support payments shall not create a debt due and owing to the Department and the value of such payments shall not be counted as income for purposes of TANF eligibility and grant determination. Where there has been a court order for support, final decree of divorce ordering support, or administrative order under the provisions of this chapter for support, the debt shall be limited to the amount of such order or decree. The Commissioner, pursuant to § 63.2-1922, shall establish the debt in an amount determined to be consistent with a noncustodial parent's ability to pay. The Department shall have the right to petition the appropriate court for modification of a court order

on the same grounds as either party to such cause.

The Department shall be subrogated to the right of such child or children or custodial parent to prosecute or maintain any support action or execute any administrative remedy existing under the laws of the Commonwealth to obtain reimbursement of moneys thus expended and may collect on behalf of any such child, children or custodial parent any amount contained in any court order of support or any administrative order of support regardless of whether or not the amount of such orders exceeds the amount of public assistance paid. Any support paid in excess of the total amount of public assistance paid shall be returned to the custodial parent by the Department. If a court order for support or final decree of divorce ordering support enters judgment for an amount of support to be paid by such noncustodial parent, the Department shall be subrogated to the debt created by such order, and said money judgment shall be deemed to be in favor of the Department. In any judicial proceeding brought by an attorney on behalf of the Department pursuant to this section to enforce a support obligation in which the Department prevails, attorney's fees shall be assessed pursuant to § 63.2-1960.

The Department shall have the authority to pursue establishment and enforcement actions against the person responsible for support after the closure of the public assistance case unless the custodial parent notifies the Department in writing that child support enforcement services are no longer desired.

Debt created by an administrative support order under this section shall not be incurred by nor at any time be collected from a noncustodial parent who is the recipient of public assistance moneys for the benefit of minor dependent children for the period such person or persons are in such status. Recipients of federal supplemental security income shall not be subject to the establishment of an administrative support order while they receive benefits from that source.

§ 63.2-1909. Receipt of public assistance for child as assignment of right in support obligation; Commissioner as attorney for endorsing drafts.

By accepting public assistance for or on behalf of a child or children, the recipient shall be deemed to have made an assignment to the Department of any and all right, title, and interest in any support obligation and arrearages owed to or for such child or children or custodial parent up to the amount of public assistance money paid for or on behalf of such child or children or custodial parent for such term of time as such public assistance moneys are paid; provided, however, that the Department may thereafter continue to collect any outstanding support obligation or arrearage owed to the Department as a result of such assignment up to the amount of public assistance money paid for or on behalf of such child or children or custodial parent which has not been paid by the noncustodial parent. The recipient shall also be deemed, without the necessity of signing any document, to have appointed the Commissioner as his or her true and lawful attorney-in-fact to act in his or her name, place, and stead to perform the specific act of endorsing any and all drafts, checks, money orders or other negotiable instruments representing support payments which are received on behalf of such child or children or custodial parent as reimbursement for the public assistance moneys previously paid to such recipient.

§ 63.2-1910. Payment of foster care expenditures for child constitutes debt to local department by noncustodial parents; limitations; local department subrogated to rights.

Any payment by a local department or public agency designated by a community policy and management team for room, board, and social services for a child in the custody of, or placed with, the local department or public agency designated by the community policy and management team, creates a debt due and owing to the local department or public agency by the persons responsible for support of such child in an amount equal to the amount paid by the local department or designated public agency and shall be assessable by the local department or designated public agency. However, where there has been a court order for support, final decree of divorce ordering support, or administrative order for support, the debt shall be limited to the amount of such order or decree. The Commissioner, pursuant to § 63.2-1922, or the court, pursuant to § 16.1-290, shall establish the debt in an amount determined to be consistent with the noncustodial parent's ability to pay. The Department, local department, or designated public agency shall have the right to petition the appropriate court for modification of a court order on the same grounds as either party to such cause.

The Department shall be subrogated to the right of such child to prosecute or maintain any support action or execute any administrative remedy existing under the laws of the Commonwealth to obtain reimbursement of moneys thus expended, and may collect on behalf of any such child any amount contained in any court order of support or any administrative order of support regardless of whether or not the amount of such orders exceeds the total amount paid by the local department or designated public agency. Any support paid in excess of the total amount shall be maintained in an account at the local department or designated public agency on behalf of the child. Any funds remaining in the account at the time that the child leaves foster care shall be paid either to the new legal guardian or to the child if he has been emancipated. If a court order for support or final decree of divorce ordering support enters judgment for an amount of support to be paid by such noncustodial parent, the Department shall be subrogated to the debt created by such order, and the money judgment shall be

deemed to be in favor of the Department. In any judicial proceeding brought by an attorney on behalf of the Department pursuant to this section to enforce a support obligation in which the Department prevails, attorney's fees shall be assessed pursuant to § 63.2-1960.

The Department shall have the authority to pursue establishment and enforcement actions against the persons responsible for support after the local department or designated public agency no longer has custody of the child or responsibility for foster care placement.

Debts created by an administrative support order under this section shall not be incurred by nor at any time collected from a noncustodial parent who is the recipient of public assistance for the benefit of minor dependent children for the period such person is in such status. Recipients of federal supplemental security income shall not be subject to the establishment of an administrative support order while they receive benefits from that source.

§ 63.2-1911. Duty of local departments to enforce support; referral to Department.

Whenever a local department approves an application for public assistance on behalf of a child or children and it appears to the satisfaction of the local department that the child has been abandoned by the noncustodial parent or that the person who has a responsibility for the care, support, or maintenance of such child has failed or neglected to give proper care or support to such child, the local department shall refer the matter to the Division within the Department responsible for the enforcement of support.

§ 63.2-1912. Minor noncustodial parents whose child receives TANF; child support obligations.

If a minor noncustodial parent whose child receives TANF is not in compliance with compulsory school attendance laws in Article 1 (§ 22.1-254 et seq.) of Chapter 14 of Title 22.1, he shall be required to pay child support as if he were an adult, and child support shall be collected.

Article 3.

Paternity.

§ 63.2-1913. Administrative establishment of paternity.

The Department may establish the parent and child relationship between a child and a man upon request, verified by oath or affirmation, filed by a child, a parent, a person claiming parentage, a person standing in loco parentis to the child or having legal custody of the child, or a representative of the Department or the Department of Juvenile Justice. The request may be filed at any time before the child attains the age of eighteen years.

Pursuant to subsection F of § 63.2-1903, the Department may summons a parent or putative parent to appear in the office of the Division of Child Support Enforcement to provide such information as may be necessary to the proceeding.

Paternity may be established by a written statement of the father and mother made under oath acknowledging paternity or scientifically reliable genetic tests, including blood tests, which affirm at least a ninety-eight percent probability of paternity. The Department may order genetic testing and shall pay the costs of such tests, subject to recoupment from the father, if paternity is established. Where an original test is contested and additional testing is requested, the Department may require advance payment by the contestant.

Before a voluntary acknowledgment of paternity is accepted by the Department as the basis for establishing paternity, the Department shall provide to both the mother and the putative father a written and oral description of the rights and responsibilities of acknowledging paternity and the consequences that arise from a signed acknowledgment, including the right to rescind the acknowledgment within the earlier of (i) sixty days from the date of signing or (ii) the date of entry of an order in an administrative or judicial proceeding relating to the child in which the signatory is a party.

A genetic test result affirming at least a ninety-eight percent probability of paternity shall have the same legal effect as a judgment entered pursuant to § 20-49.8. When sixty days have elapsed from its signing, a voluntary statement acknowledging paternity shall have the same legal effect as a judgment entered pursuant to § 20-49.8 and shall be binding and conclusive unless, in a subsequent judicial proceeding, the person challenging the statement establishes that the statement resulted from fraud, duress or a material mistake of fact. In any subsequent proceeding in which a statement acknowledging paternity is subject to challenge, the legal responsibilities of any person signing it shall not be suspended during the pendency of the proceeding, except for good cause shown.

The order of the Department in proceedings pursuant to this section shall be served upon the putative father in accordance with the provisions of Chapter 8 (§ 8.01-285 et seq.) or Chapter 9 (§ 8.01-328 et seq.) of Title 8.01. The Department shall file a copy of its order determining paternity, including the information required by subsection C of § 20-49.8, with the State Registrar of Vital Records within thirty days after the acknowledgment becomes binding and conclusive or the order otherwise becomes final. No judicial or administrative proceeding shall be required to ratify an unchallenged acknowledgment of paternity nor shall the Department or the courts have any jurisdiction over proceedings to ratify an unchallenged acknowledgment.

§ 63.2-1914. Hospital paternity establishment programs.

Each public and private birthing hospital in the Commonwealth shall provide unwed parents the opportunity to legally establish the paternity of a child prior to the child's discharge from the hospital following birth, by means of a voluntary acknowledgment of paternity signed by the mother and the father, under oath.

Birthing hospitals are defined as hospitals with licensed obstetric-care units, hospitals licensed to provide obstetric services, or licensed birthing centers associated with a hospital. Birthing centers are facilities outside hospitals that provide maternity services.

Designated staff members of such hospitals shall provide to both the mother and the alleged father, if he is present at the hospital, (i) written materials regarding paternity establishment, (ii) the forms necessary to voluntarily acknowledge paternity, (iii) a written and oral description of the rights and responsibilities of acknowledging paternity, and (iv) the opportunity, prior to the child's discharge from the hospital, to speak with staff who are trained to provide information and answer questions about paternity establishment. The provision by designated hospital staff members of the information required by this section, consistent with federal regulations, shall not constitute the unauthorized practice of law pursuant to Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1.

Hospitals shall send the original acknowledgment of paternity containing the social security numbers, if available, of both parents, with the information required by Article 2 (§ 32.1-257 et seq.) of Chapter 7 of Title 32.1, to the State Registrar of Vital Records so that the birth certificate issued includes the name of the legal father of the child.

The Department shall (a) provide to birthing hospitals all necessary materials and forms, and a written description of the rights and responsibilities related to voluntary acknowledgment of paternity; (b) provide the necessary training, guidance and written instructions regarding voluntary acknowledgment of paternity; (c) annually assess each birthing hospital's paternity establishment program; (d) pay to each hospital an amount determined by regulation of the Board for each acknowledgment of paternity signed under oath by both parents; and (e) determine if a voluntary acknowledgment has been filed with the State Registrar of Vital Records in cases applying for paternity establishment services.

Article 4.

Orders and Review.

§ 63.2-1915. Administrative support order.

All administrative orders issued by the Department shall have the same force and effect as a court order. However, any order issued by a court of this Commonwealth supersedes an administrative order.

§ 63.2-1916. Notice of administrative support order; contents; hearing; modification.

The Commissioner may proceed against a noncustodial parent whose support debt has accrued or is accruing based upon subrogation to, assignment of, or authorization to enforce a support obligation. Such obligation may be created by a court order for support of a child or child and spouse or decree of divorce ordering support of a child or child and spouse. In the absence of such a court order or decree of divorce, the Commissioner may, pursuant to this chapter, proceed against a person whose support debt has accrued or is accruing based upon payment of public assistance or who has a responsibility for the support of any dependent child or children and their custodial parent. The administrative support order shall also provide that support shall continue to be paid for any child over the age of eighteen who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent seeking or receiving child support, until such child reaches the age of nineteen or graduates from high school, whichever comes first. The Commissioner shall initiate proceedings by issuing notice containing the administrative support order which shall become effective unless timely contested. The notice shall be served upon the debtor (a) in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329 or (b) by certified mail, return receipt requested, or the debtor may accept service by signing a formal waiver. A copy of the notice shall be sent to the obligee by first-class mail. The notice shall include the following:

1. A statement of the support debt or obligation accrued or accruing and the basis and authority under which the assessment of the debt or obligation was made;

2. A statement of the name of the child or children and custodial parent for whom support is being sought;

3. A statement that support shall continue to be paid for any child over the age of eighteen who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent seeking or receiving child support, until such child reaches the age of nineteen or graduates from high school, whichever comes first;

4. A demand for immediate payment of the support debt or obligation or, in the alternative, a demand that the debtor file an answer with the Commissioner within ten days of the date of service of the notice stating his defenses to liability;

5. A statement of each party's name, residential and, if different, mailing address, telephone number, driver's license number, and the name, address and telephone number of his employer; however, when a protective order has been issued or the Department otherwise finds reason to believe that a party is at risk of physical or emotional harm from the other party, information other than the name of the party at risk shall not be included in the notice;

6. A statement that if no answer is made on or before ten days from the date of service of the notice, the administrative support order shall be final and enforceable, and the support debt shall be assessed and determined subject to computation, and is subject to collection action;

7. A statement that the property of the debtor will be subject to lien and foreclosure, distraint, seizure and sale or an order to withhold and deliver or withholding of earnings;

8. A statement that the obligor shall keep the Department informed regarding access to health insurance coverage and health insurance policy information and a statement that health care coverage shall be required for the debtor's dependent children if available at reasonable cost as defined in § 63.2-1900;

9. A statement of each party's right to appeal and the procedures applicable to appeals from the decision of the Commissioner;

10. A statement that the obligor's income shall be immediately withheld to comply with this order unless the obligee, or the Department, if the obligee is receiving public assistance, and obligor agree to an alternative arrangement;

11. A statement that any determination of a support obligation under this section creates a judgment by operation of law and as such is entitled to full faith and credit in any other state or jurisdiction;

12. A statement that each party shall give the Department written notice of any change in his address or phone number within thirty days; and

13. A statement that each party shall keep the Department informed of the name, telephone number and address of his current employer.

If no answer is received by the Commissioner within ten days of the date of service or acceptance, the administrative support order shall be effective as provided in the notice. The Commissioner may initiate collection procedures pursuant to this chapter, Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 or Title 20. The debtor and the obligee have ten days from the date of receipt of the notice to file an answer with the Commissioner to exercise the right to an administrative hearing.

Any changes in the amount of the administrative order must be made pursuant to this section. In no event shall an administrative hearing alter or amend the amount or terms of any court order for support or decree of divorce ordering support. No support order may be retroactively modified, but may be modified with respect to any period during which there is a pending petition for modification, but only from the date that notice of the review has been served on the nonrequesting party. Notice of the review shall be served for each review (1) in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329, or (2) by certified mail, with proof of actual receipt by the addressee, or (3) by the nonrequesting party executing a waiver. The existence of an administrative order shall not preclude either an obligor or obligee from commencing appropriate proceedings in a juvenile and domestic relations district court or a circuit court.

§ 63.2-1917. When delivery of notice to party at last known address may be deemed sufficient.

In any subsequent child support enforcement proceeding between the parties, upon sufficient showing that diligent effort was made to ascertain the location of a party, that party may be served with any required notice by delivery of the written notice to that party's residential or business address as filed with the court pursuant to § 20-60.3 or the Department, or if changed, as shown in the records of the Department or the court. However, any person served with notice as provided in this section may challenge, in a subsequent judicial proceeding, an order entered based upon such service on the grounds that he did not receive the notice and enforcement of the order would constitute manifest injustice.

§ 63.2-1918. Administrative establishment of obligations.

The Department shall set child support at the amount resulting from computations pursuant to the guideline set out in § 20-108.2 in determining the required monthly support obligation, the amount of support obligation arrearage, if any, and the amount to be paid periodically against such arrearage. There shall be a rebuttable presumption that the amount of the award which would result from the application of the guidelines is the correct amount of child support to be awarded. In order to rebut the presumption the Department shall make written findings in its order that the application of the guidelines would be unjust or inappropriate in a particular case as determined by relevant evidence pertaining to support for other children in the household or other children for whom any administrative or court order exists, or relevant evidence pertaining to imputed income to a person who is voluntarily unemployed or who fails to provide verification of income upon request of the Department; provided that income may not be imputed to the custodial parent because (i) a child is not regularly attending

school, (ii) child care services are not available, or (iii) the cost of such child care services are not added to the basic child support obligation. Additional factors that may lead to rebuttal of the presumption shall be determined by Department regulation.

§ 63.2-1919. Requirement to provide financial statements.

Any noncustodial parent in the Commonwealth whose absence or failure to provide support and maintenance is the basis upon which an application is filed for child support services or public assistance and any custodial parent who applies for public assistance or child support services shall be required to complete a statement of his or her current monthly income, his or her total income over the past twelve months, amounts due from or to such person or parent under any court or administrative orders for support of a child or child and spouse, the number of dependents for whom he or she is providing support, the amount he or she is contributing regularly toward the support of all children or custodial parents for whom application is made, and such other information as is pertinent to determining his or her ability to support his or her children or custodial parent. Such noncustodial parent shall certify under penalty of perjury the correctness of the statement. Such statement shall be provided upon demand made by the Department or any attorney representing the Department. Additional statements shall be filed annually thereafter with the Department as long as a debt to the Department exists or as long as there is an authorization for the Department to collect or enforce a support obligation. Failure to comply with this section shall constitute a Class 4 misdemeanor.

§ 63.2-1920. Department may order exchange of financial information.

The Department may order the obligor and payee to notify each other at specified intervals of current gross income as defined in § 20-108.2 and any other pertinent information which may affect child support amounts. For good cause shown, the Department may order that such information be provided to the Department and made available to the parties for inspection in lieu of the parties' providing such information directly to each other.

§ 63.2-1921. Authority to initiate reviews of certain orders.

A. The Department may, pursuant to this chapter and in accordance with § 20-108.2, initiate a review of the amount of support ordered by any court. If a material change in circumstances has occurred, the Department shall report its findings and a proposed modified order to the court which entered the order or the court having current jurisdiction. Notice of the review shall be served for each review on both parties (i) in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329, or (ii) by certified mail, with proof of actual receipt by the addressee, or (iii) by the nonrequesting party executing a waiver. Either party may request a hearing on the proposed modified order by filing a request with such court within thirty days of receipt of notice by the requesting party. Unless a hearing is requested within the time limits, no hearing shall be required and the court shall enter the modified order, which shall be effective from the date that notice of such review was served on the nonrequesting party. The court shall modify any prior court order, or schedule a hearing on its motion and so notify the parties and the Department. If a hearing is held, the Department shall have the burden of proof.

B. However, if the order being reviewed by the Department deviated from the guidelines, when entered, based on one or more of the deviating factors set out in § 20-108.1 and the Department determines that there has been a material change in circumstances, the procedure set forth in subsection A shall not apply and the Department shall schedule a hearing with the court which entered the order or the court having current jurisdiction.

C. A material change in circumstances shall be deemed to have occurred if the difference between the existing child support award and the amount which would result from application of the guidelines is at least ten percent of the existing child support award but not less than twenty-five dollars per month.

§ 63.2-1922. Commissioner may set amount of debt accrued where no court order or final divorce decree.

The Commissioner may, at any time, consistent with the provisions of § 63.2-1918, set or reset the amount of the debt accrued or accruing, due and owing under this chapter in those cases where there has been no court order for support or final decree of divorce ordering support entered.

Article 5.

Income Withholding.

§ 63.2-1923. Immediate withholding from income; exception; notices required.

A. Every administrative support order directing a noncustodial parent to pay child or child and spousal support shall provide for immediate income withholding from the noncustodial parent's income as defined in § 63.2-1900 of an amount for current support plus an amount to be applied toward liquidation of arrearages, if any, unless the obligor and the Department, on behalf of the obligee, agree to a written alternative payment arrangement, or good cause is shown. Good cause shall be based upon a written determination that, and explanation by the Department of why, implementing immediate withholding would not be in the best interests of the child. The total amount withheld shall not exceed

the maximum amount permitted under § 34-29.

B. The order shall include, but not be limited to, notice (i) of the amount that will be withheld, (ii) that the withholding applies to any current or subsequent period of employment, (iii) of the right to contest whether a duty of support is owed and the information specified in the administrative order is correct, (iv) that a written request to appeal the withholding shall be made to the Department within ten days of receipt of the notice, and (v) of the actions that will be taken by the Department if an appeal is noted, which shall include the opportunity to present his objections to the administrative hearing officer at a hearing held pursuant to § 63.2-1942. Upon service of the order on the employer by certified mail, or service in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329, the employer shall deliver the order to the noncustodial parent. A copy shall be sent by first-class mail to the obligee.

C. The noncustodial parent's employer shall be issued by certified mail or by electronic means, including facsimile transmission, an administrative order for withholding of income which shall conform to § 20-79.3. The rights and responsibilities of an employer with respect to such orders are set out in § 20-79.3.

D. If the Department or its designee receives payments deducted from income of an obligor pursuant to more than one administrative order or a combination of judicial and administrative orders, the Department shall ensure that such payments are allocated among the obligees under such orders with priority given to payment of the order for current support. Where the Department or its designee receives payments pursuant to two or more orders for current support, the payments received shall be prorated on the basis of the amounts due under each such order. Upon satisfaction of any amounts due for current support, the remainder of the payments received shall be prorated on the basis of amount due under each such order. Upon satisfaction of any amounts due for current support, the remainder of the payments received shall be prorated on the basis of amounts due under any orders for accrued arrearages.

E. Administrative orders for withholding from income shall be promptly terminated or modified by the Department when (i) the obligation to support has been satisfied and arrearages have been paid, (ii) the whereabouts of the child or child and custodial parent become unknown, or (iii) modification is appropriate because of a change in the amount of the obligation.

§ 63.2-1924. Withholding from income; default of administrative or judicial support order; notices required; priorities; orders from other states.

A. As part of every administrative support order directing a noncustodial parent to pay child or child and spousal support or by separate order at any time thereafter, provision shall be made for withholding from the income of the noncustodial parent the amount of the withholding order plus an amount to be applied toward liquidation of arrearages if the noncustodial parent fails to make payments in an amount equal to the support payable for one month. The total amount withheld shall not exceed the maximum amount permitted under § 34-29.

B. Upon default of an administrative or judicial support order, the Department shall serve notice on the noncustodial parent of the delinquency in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329 or by certified mail or electronic means, including facsimile transmission, for delivery to the noncustodial parent. The obligee shall also be sent a copy of such notice. The notice shall inform the noncustodial parent (i) of the amount that will be withheld, (ii) that the withholding applies to any current or subsequent period of employment, (iii) of the right to contest but that the only basis for contesting the withholding is a mistake of fact, (iv) that a written request to contest the withholding must be made to the Department within ten days of receipt of the notice, (v) of the actions that will be taken by the Department if a request to contest is noted, which shall include the opportunity to present his objections, which shall be limited to a mistake of fact, to the administrative hearing officer at a hearing held pursuant to § 63.2-1942, (vi) that a determination on the contest will be made no later than forty-five days from the date of service of such notice, and (vii) that payment of overdue support upon receipt of the required notice shall not be a bar to the implementation of withholding. Upon service of the notice on the employer for delivery to the obligor, a copy shall be sent by first-class mail to the obligee.

C. The noncustodial parent's employer shall be issued by certified mail or by electronic means, including facsimile transmission, an administrative order for withholding of income that shall conform to § 20-79.3. The rights and responsibilities of an employer with respect to such orders are set out in § 20-79.3.

D. The Department shall have the authority in the issuance of an administrative order under § 20-79.3, based on an existing court order, to convert the terms of payment to conform with the obligor's pay period interval. The Department shall utilize the conversion formula established by the Committee on District Courts.

E. If the Department or its designee receives payments deducted from income of an obligor pursuant to more than one administrative order or a combination of judicial and administrative orders, the

Department shall ensure that such payments are allocated among the obligees under such orders with priority given to payment of the order for current support. Where the Department or its designee receives payments pursuant to two or more orders for current support, the payments received shall be prorated on the basis of the amounts due under each such order. Upon satisfaction of any amounts due for current support, the remainder of the payments received shall be prorated on the basis of amounts due under each such order. Upon satisfaction of any amounts due for current support, the remainder of the payments received shall be prorated on the basis of amounts due under any orders for accrued arrearages.

F. Administrative orders for withholding from income shall be promptly terminated or modified by the Department when (i) the obligation to support has been satisfied and arrearages have been paid, (ii) the whereabouts of the child or child and custodial parent become unknown, or (iii) modification is appropriate because of a change in the amount of the obligation.

G. If a court of competent jurisdiction or the agency operating pursuant to an approved state plan under Sections 452 and 454 of the Social Security Act, as amended, in any state, territory of the United States or the District of Columbia has ordered a person to pay child or child and spousal support, upon notice and hearing as provided in this section, the Department shall issue an order, conforming to § 20-79.3, to the noncustodial parent's employer in this Commonwealth to withhold from the income of the noncustodial parent pursuant to a foreign support order in the same manner as provided in this section for administrative orders originating in this Commonwealth. Similar orders of the Department may be enforced in a similar manner in such other state, territory or district.

§ 63.2-1925. Certain amount of income that may be withheld by lien or order.

Whenever a support lien, order to withhold and deliver property or order for withholding of income is served upon any person, firm, corporation, association, political subdivision or department of this Commonwealth asserting a support debt against income and there is any such income in the possession of such person, then that person shall withhold from the disposable income as defined in § 63.2-100 (i) the amount stated in the lien, the order to withhold and deliver property, or the order for withholding of income; or (ii) the maximum amount permitted under § 34-29, whichever is less. The order shall show the maximum percentage of disposable income which may be withheld pursuant to § 34-29. The lien or order to withhold and deliver shall continue to operate and require such person, firm, corporation, association, political subdivision, or department of this Commonwealth to withhold the nonexempt portion of income at each succeeding income disbursement interval until the entire amount of the support debt stated in the lien has been withheld. The order for withholding of income continues until further notice by certified mail, return receipt requested, from the Department is received by the employer.

§ 63.2-1926. Withholding pursuant to foreign support order.

If a court of competent jurisdiction or the agency operating pursuant to an approved state plan under Sections 452 and 454 of the Social Security Act, as amended, in any state, territory of the United States or the District of Columbia has ordered a person to pay child or child and spousal support, upon notice and hearing as provided in this section, the Department shall order such noncustodial parent's employer in this Commonwealth to withhold from the earnings of the noncustodial parent pursuant to a foreign support order in the same manner as provided in §§ 63.2-1923 and 63.2-1924.

Article 6.

Enforcement Remedies.

§ 63.2-1927. Assertion of lien; effect.

Ten days after service of the notice containing the proposed administrative support order as provided in § 63.2-1916, or immediately upon receipt by the Department of a support order from a jurisdiction outside of Virginia, a lien may be asserted by the Commissioner upon the real or personal property of the debtor. The claim of the Department for a support debt, not paid when due, shall be a lien when docketed against all property of the debtor in the county or city where docketed with priority of a secured creditor. However, the lien of the Department shall be subordinate to the lien of any prior mortgagee. This lien shall be separate and apart from, and in addition to, any other lien created by, or provided for, in this title. Such order, when an abstract thereof is docketed with the circuit court, shall have the same effect as a docketed abstract of judgment from another Virginia court.

Whenever a support lien has been filed and there is in the possession of any person, firm, corporation, association, political subdivision or department of the Commonwealth having notice of such lien, any property which may be subject to the support lien, such property shall not be paid over, released, sold, transferred, encumbered or conveyed, except as provided for by the exemptions contained in § 63.2-1933, unless a written release or waiver signed by the Commissioner has been delivered to such person, firm, corporation, association, political subdivision or department of the Commonwealth or unless a determination has been made in a hearing pursuant to § 63.2-1916 or by a court ordering release of such support lien on the basis that no debt exists or that the debt has been satisfied.

§ 63.2-1928. Service of lien.

The Commissioner may at any time after the filing of a support lien serve a copy of said lien upon any person, firm, corporation, association, political subdivision or department of the Commonwealth in possession of earnings, or deposits or balances held in any bank account of any nature that are due, owing, or belonging to such debtor. Such support lien shall be served upon the person, firm, corporation, association, political subdivision or department of the Commonwealth either in the manner prescribed for the service of warrant in a civil action or by certified mail, return receipt requested. At any time after a support lien has been filed, the Director may notify consumer credit reporting agencies that the lien has been filed. No lien filed under § 63.2-1927 shall have any effect against earnings or bank deposits or balances unless it states the amount of the support debt accrued and unless service upon such person, firm, corporation, association, political subdivision or department of the Commonwealth in possession of earnings or bank accounts, deposits or balances is accomplished pursuant to this section.

§ 63.2-1929. Orders to withhold and to deliver property of debtor; issuance and service; contents; right to appeal; answer; effect; delivery of property; bond to release; fee; exemptions.

A. After notice containing an administrative support order has been served or service has been waived or accepted, an opportunity for a hearing has been exhausted and a copy of the order furnished as provided for in § 63.2-1916, or whenever a court order for child or child and spousal support has been entered, the Commissioner is authorized to issue to any person, firm, corporation, association, political subdivision or department of the Commonwealth, orders to withhold and to deliver property of any kind including, but not restricted to, income of the debtor, when the Commissioner has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision or department of the Commonwealth, property that is due, owing, or belonging to such debtor. The orders to withhold and to deliver shall take priority over all other debts and creditors under state law of such debtor except with respect to a prior payroll deduction or income withholding order pursuant to §§ 20-79.1, 20-79.2, 63.2-1923 or § 63.2-1924.

B. The order to withhold shall also be served upon the debtor within a reasonable time thereafter, and shall state the amount of the support debt accrued. The order shall state in summary the terms of §§ 63.2-1925 and 63.2-1930 and shall be served in the manner prescribed for the service of a warrant in a civil action or by certified mail, return receipt requested. The order to withhold shall advise the debtor that this order has been issued to cause the property of the debtor to be taken to satisfy the debt and advise of property that may be exempted from this order. The order shall also advise the debtor of a right to appeal such order based upon a mistake of fact and that if no appeal is made within ten days of being served, his property is subject to be taken.

C. If the debtor believes such property is exempt from this debt, within ten days of the date of service of the order to withhold, the debtor may file an appeal to the Commissioner stating any exemptions that may be applicable. If the Commissioner receives a timely appeal, a hearing shall be promptly scheduled before a hearing officer upon reasonable notice to the obligee. The Commissioner may delegate authority to conduct the hearing to a duly qualified hearing officer who shall consider the debtor's appeal. Action by the Commissioner under the provisions of this chapter to collect such support debt shall be valid and enforceable during the pendency of any appeal.

The decision of the hearing officer shall be in writing and shall set forth the debtor's rights to appeal an adverse decision of the hearing officer pursuant to § 63.2-1943. The decision shall be served upon the debtor in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329 or mailed to the debtor at his last known address by certified mail, return receipt requested, or service may be waived. A copy of such decision shall also be mailed to the obligee. Such decision shall establish whether the debtor's property is exempt under state or federal laws and regulations.

D. Any person, firm, corporation, association, political subdivision or department of the Commonwealth upon whom service has been made is hereby required to answer such order to withhold within ten days, exclusive of the day of service, under oath and in writing, and shall file true answers to the matters inquired of therein. In the event there is in the possession of any such person, firm, corporation, association, political subdivision or department of the Commonwealth, any property that may be subject to the claim of the Department, such property shall be withheld immediately upon receipt of the order to withhold, together with any additional property received by such person, firm, corporation, association, political subdivision, or department of the Commonwealth valued up to the amount of the order until receipt of an order to deliver or release. The property shall be delivered to the Commissioner upon receipt of an order to deliver; however, distribution of the property shall not be made during pendency of all appeals. Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, or association, political subdivision or department of the Commonwealth subject to withdrawal by the debtor, such money shall be delivered by remittance payable to the order of the Treasurer of Virginia. The person, firm,

corporation, political subdivision or department of the Commonwealth herein specified shall be entitled to receive from such debtor a fee of five dollars for each answer or remittance on account of such debtor. The foregoing is subject to the exemptions contained in §§ 63.2-1925 and 63.2-1933.

E. Delivery to the Commissioner shall serve as full acquittance and the Commonwealth warrants and represents that it shall defend and hold harmless for such actions persons delivering money or property to the Commissioner pursuant to this chapter.

F. An order issued to an employer for withholding from the earnings of an employee pursuant to this section shall conform to § 20-79.3. The rights and obligations of an employer with respect to the order are set out in § 20-79.3.

§ 63.2-1930. Civil liability upon failure to comply with lien, order, etc.

Should any person, firm, corporation, association, political subdivision or department of this Commonwealth fail to answer an order to withhold and deliver within the time prescribed herein, or fail or refuse to deliver property pursuant to said order, or after actual notice of filing of a support lien, pay over, release, sell, transfer, or convey real or personal property subject to a support lien to or for the benefit of the debtor or any other person, or fail or refuse to surrender upon demand property distrained under § 63.2-1933 or fail or refuse to honor a voluntary assignment of wages under § 63.2-1945 presented by the Commissioner, such person, firm, corporation, association, political subdivision or department of this Commonwealth shall be liable to the Department in an amount equal to 100 percent of the value of the debt which is the basis of the lien, order to withhold and deliver, distraint, or an income withholding order or voluntary assignment of wages.

§ 63.2-1931. Effect of service on banks, savings institutions, etc.

Service of a lien or orders to withhold and deliver or any other notice or document authorized by this chapter on the main office or headquarters or registered agent of any bank, savings institution or other financial institution or broker-dealer as defined in § 13.1-501 or any other place designated by such financial institution or broker-dealer shall be effective as to any accounts, credits or other personal property (excluding property held in a safe-deposit box) of the noncustodial parent held by that institution or broker-dealer. The bank, savings institution, financial institution or broker-dealer may accept service or treat service as valid even though made at a point other than those specified above.

Within twenty-one days of receipt of an answer from any bank, savings institution or other financial institution or broker-dealer indicating that a support debtor may have an interest in funds in a joint account, the Department shall serve notice of the order to withhold on all joint account holders at the address for each account holder as provided by the bank, savings institution or other financial institution or broker-dealer in the same manner as service upon the support debtor. A copy of the notice shall be served on the financial institution or broker-dealer by certified mail, return receipt requested. Each account holder may appeal the action to a hearing officer as provided in § 63.2-1929. However, the issue to be determined by the hearing officer is limited to whether the support debtor has any interest in the joint account which is being held based on the support debtor's contribution to the account. Upon satisfactory proof that the support debtor has no interest in the joint account, the Department shall release the order to withhold. Upon receipt of the copy of the notice to the joint account holders, the financial institution or broker-dealer shall treat the initial order to withhold as continuing in effect over the entire property being withheld until a release or order to deliver is served by the Department or until the ninety-day period set forth in the following paragraph expires. If the financial institution or broker-dealer does not receive a copy of the notice to the joint account holders within twenty-one days from delivery of its answer, it may treat the order to withhold as released.

Upon the determination that the support debtor has some interest in the joint account, the Department shall initiate a petition in the general district court or in the circuit court, if the joint account and the amount claimed against the support debtor each exceed $10,000, for the jurisdiction in which the support debtor or any joint account owner resides in order that the court may make a determination of the extent of the interest of the support debtor in the joint account, based on the amount the support debtor contributed to the account. If the support debtor and all account owners are nonresidents, venue shall be where the support obligee resides or where the property is located. In cases where the joint account is owned by persons married to each other, the funds in the account shall belong to them equally unless there is clear and convincing evidence otherwise. The Department shall serve a copy of the petition on the financial institution or broker-dealer by certified mail, return receipt requested. If the financial institution or broker-dealer does not receive a copy of the petition within ninety days of receipt of the notice to the joint account holders, it may treat the order to withhold as released.

Notwithstanding service or receipt of such order of support, the financial institution may pay any check deposited with it or another financial institution on or before the date of service or receipt of the order of support on it.

§ 63.2-1932. Data exchange agreements authorized; immunity.

The Commissioner is authorized and shall, as feasible, enter into agreements with financial institutions doing business in the Commonwealth to develop and operate, in conjunction with such financial institutions, a data match system using automated data exchanges to the maximum extent feasible. Pursuant to a data match system, a financial institution shall provide on a periodic basis, but no more frequently than every three months, the account title, record address, social security number or other taxpayer identification number, for any person in arrears in the payment of child support who is identified by the Department in the request by social security number or other taxpayer identification number.

Any such agreement shall provide for the following:

1. The financial institution shall be obligated to match only those accounts for which a social security number or taxpayer identification number is provided by the Department, and shall have no obligation to match or identify any account based on a person's name or any other identifying information;

2. The financial institution shall provide the account title, record address, social security number or taxpayer identification number for any account matching the social security number and taxpayer identification number provided by the Department. It shall be the Department's responsibility to determine whether such account is an account subject to a lien, or order to withhold and deliver in accordance with the provisions of this chapter;

3. The financial institution shall be given a reasonable time in which to respond to each data match request, based upon the capabilities of the financial institution to handle the data match system, but in no event less than thirty days; and

4. The financial institution shall have no obligation to hold, encumber, or surrender assets in any account based on a match until it is served with a lien or order to withhold and deliver in accordance with the provisions of this chapter.

The Department is authorized to pay a reasonable fee to a financial institution for conducting the data match, not to exceed the actual costs incurred by such financial institution and may assess and recover actual costs incurred from noncustodial parents identified as a result of the data match.

A financial institution providing information in accordance with this section shall not be liable to any account holder or other person for any disclosure of information to the Department, for encumbering or surrendering any assets held by such financial institution in response to a lien or order to withhold and deliver issued by the Department, or for any other action taken pursuant to this section, including individual or mechanical errors, provided such action does not constitute gross negligence or willful misconduct.

For purposes of this section, "account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, share account, share draft account or money market mutual fund account maintained in this Commonwealth.

§ 63.2-1933. Distraint, seizure and sale of property subject to liens.

Whenever a support lien has been filed pursuant to § 63.2-1927, the Commissioner may collect the support debt stated in such lien by distraint, seizure and sale of the property subject to such lien. The Commissioner shall give notice to the debtor and any person known to have or claim an interest therein of the general description of the property to be sold and the time and place of sale of such property. Such notice shall be given to such persons by certified mail, return receipt requested. A notice specifying the property to be sold shall be posted in at least two public places in the jurisdiction wherein the distraint has been made. The time of sale shall not be less than ten nor more than twenty days from the date of posting of such notices. Such sale shall be conducted by the Commissioner, who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum reasonable price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the price so fixed, the Commissioner may declare such property to be purchased by the Department for such price, or may conduct another sale of such property pursuant to the provisions of this section. In the event of sale, the debtor's account shall be credited with the amount for which the property has been sold. Property acquired by the Department as herein prescribed may be sold by the Commissioner at public or private sale, and the amount realized shall be placed in the state general fund to the credit of the Department. In all cases of sale, as aforesaid, the Commissioner shall issue a bill of sale or a deed to the purchaser and such bill of sale or deed shall be prima facie evidence of the right of the Commissioner to make such sale and conclusive evidence of the regularity of his proceeding in making the sale and shall transfer to the purchaser all right, title, and interest of the debtor in such property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the Department, shall be first applied by the Commissioner to reimbursement of the costs of distraint and the sale, and thereafter in satisfaction of the delinquent account. Any excess which shall thereafter remain in the hands of the Commissioner shall be refunded to the debtor. Sums so refundable to a debtor may be subject to seizure

or distraint by any taxing authority of the Commonwealth or its political subdivisions or by the Commissioner for new sums due and owing subsequent to the subject proceeding. Except as specifically provided in this chapter, there shall be exempt from attachment, distraint, seizure, execution and sale under this chapter such property as is exempt therefrom under the laws of this Commonwealth.

§ 63.2-1934. Action for foreclosure of lien; satisfaction.

Whenever a support lien has been filed, an action in foreclosure of lien upon real or personal property may be brought in the circuit court of the jurisdiction wherein such real or personal property is or was located and the lien was filed. Judgment if rendered in favor of the Department shall be for the amount due, with costs, and the court shall allow, as part of the costs, the moneys paid for making and filing the claim of lien, and a reasonable attorney's fee. The court shall order any property upon which any lien provided for by this chapter is established, to be sold by the sheriff of the proper jurisdiction to satisfy the lien and costs. The payment of the lien debt, costs and reasonable attorney's fees, at any time before sale, shall satisfy the judgment of foreclosure. Where the net proceeds of sale upon application to the debt claimed do not satisfy the debt in full, the Department shall have judgment over any deficiency remaining unsatisfied and further levy upon other property of the judgment debtor may be made under the same execution. In all sales contemplated under this section, advertising of notice shall only be necessary for two weeks in a newspaper published in the jurisdiction where such property is located, and if there be no newspaper therein, then in the most convenient newspaper having a circulation in such jurisdiction. Remedies provided for herein are alternatives to remedies provided for in other sections of this chapter.

§ 63.2-1935. Satisfaction of lien after foreclosure proceedings instituted; redemption.

Any person owning real property, or any interest in real property, against which a support lien has been filed and foreclosure instituted, shall have the right to pay the amount due, together with expenses of the proceedings and reasonable attorney fee to the Commissioner and upon such payment the Commissioner shall restore said property to him and all further proceedings in such foreclosure action shall cease. Such person shall also have the right within 240 days after sale of property foreclosed under § 63.2-1934 to redeem said property by making payment to the purchaser in the amount paid by the purchaser plus interest thereon at the rate of six per centum per annum.

§ 63.2-1936. Procedures for posting security, bond or guarantee to secure payment of overdue support.

The Department shall require, if feasible and consistent with guidelines established by the Department, that the noncustodial parent post security or bond or give some guarantee to secure overdue payments. Advance notice shall be sent to the noncustodial parent setting forth (i) the amount of the delinquency, (ii) the proposed action to be taken by the Department, (iii) the method available for contesting the impending action and (iv) that only a mistake of fact as defined in § 63.1-250 may be contested.

§ 63.2-1937. Applications for occupational or other license to include social security number; suspension upon delinquency; procedure.

Every initial application for or application for renewal of a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth pursuant to Titles 22.1, 38.2, 46.2 or 54.1 or any other provision of law shall require that the applicant provide his social security number or a control number issued by the Department of Motor Vehicles pursuant to § 46.2-342.

Upon thirty days' notice to an obligor who (i) has failed to comply with a subpoena, summons or warrant relating to paternity or child support proceedings or (ii) is alleged to be delinquent in the payment of child support by a period of ninety days or more or for $5,000 or more, an obligee or the Department on behalf of an obligee, may petition either the court that entered or the court that is enforcing the order for child support for an order suspending any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation, or recreational activity issued to the obligor by the Commonwealth pursuant to Titles 22.1, 29.1, 38.2, 46.2 or 54.1 or any other provision of law. The notice shall be sent by certified mail, with proof of actual receipt. The notice shall specify that (a) the obligor has thirty days from the date of receipt to comply with the subpoena, summons or warrant or pay the delinquency or to reach an agreement with the obligee or the Department to pay the delinquency and (b) if compliance is not forthcoming or payment is not made or an agreement cannot be reached within that time, a petition will be filed seeking suspension of any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation, or recreational license issued by the Commonwealth to the obligor.

The court shall not suspend a license, certificate, registration or authorization upon finding that an alternate remedy is available to the obligee or the Department that is likely to result in collection of the delinquency. Further, the court may refuse to order the suspension upon finding that (1) suspension would result in irreparable harm to the obligor or employees of the obligor or would not result in

collection of the delinquency or (2) the obligor has made a demonstrated, good faith effort to reach an agreement with the obligee or the Department.

If the court finds that the obligor is delinquent in the payment of child support by ninety days or more or in an amount of $5,000 or more and holds a license, certificate, registration or other authority to engage in a business, trade, profession or occupation or recreational activity issued by the Commonwealth, it shall order suspension. The order shall require the obligor to surrender any license, certificate, registration or other such authorization to the issuing entity within ninety days of the date on which the order is entered. If at any time after entry of the order the obligor (A) pays the delinquency or (B) reaches an agreement with the obligee or the Department to satisfy the delinquency within a period not to exceed ten years and makes at least one payment, representing at least five percent of the total delinquency or $500, whichever is greater, pursuant to the agreement, or (C) complies with the subpoena, summons or warrant or reaches an agreement with the Department with respect to the subpoena, summons or warrant, upon proof of payment or certification of the compliance or agreement, the court shall order reinstatement. Payment shall be proved by certified copy of the payment record issued by the Department or notarized statement of payment signed by the obligee. No fee shall be charged to a person who obtains reinstatement of a license, certificate, registration or authorization pursuant to this section.

§ 63.2-1938. Commissioner may release lien or order or return seized property.

The Commissioner may at any time release a support lien, or order to withhold and deliver, on all or part of the property of the debtor, or return seized property without liability, if assurance of payment is deemed adequate by the Commissioner, or if such action will facilitate the collection of the debt, but such release or return shall not operate to prevent future action to collect from the same or other property.

§ 63.2-1939. Commissioner may make demand, file and serve liens, when payments appear in jeopardy.

If the Commissioner finds that the collection of any support debt based upon subrogation to or authorization to enforce the amount of support ordered by any court order or decree of divorce is in jeopardy, he may make demand under § 63.2-1916 for immediate payment of the support debt. Upon failure or refusal immediately to pay such support debt, he may file and serve liens pursuant to §§ 63.2-1927 and 63.2-1928, without regard to the ten-day period provided for in § 63.2-1916. However, no further action under §§ 63.2-1929, 63.2-1933 and 63.2-1934 may be taken until the notice requirements of § 63.2-1916 are met.

§ 63.2-1940. Reporting payment arrearage information to consumer credit reporting agencies.

The Division of Child Support Enforcement shall provide support payment arrearage information on noncustodial parents, as defined in § 63.2-100, to consumer credit reporting agencies. Advance notice shall be sent to the noncustodial parent of the proposed release of arrearage information. The notice shall include information on the procedures available to the noncustodial parent for contesting the accuracy of the arrearage information.

§ 63.2-1941. Additional enforcement remedies.

In addition to its other enforcement remedies, the Division of Child Support Enforcement is authorized to:

1. Attach unemployment benefits through the Virginia Employment Commission pursuant to § 60.2-608 and workers' compensation benefits through the Workers' Compensation Commission pursuant to § 65.2-531; and

2. Suspend an individual's driver's license pursuant to § 46.2-320.

Article 7.

Administrative Appeal.

§ 63.2-1942. Administrative hearing on notice of debt; withholdings; orders to withhold and deliver property to debtor; set-off debt collection.

The Commissioner may delegate authority to conduct any administrative hearing pursuant to this chapter to a duly qualified hearing officer. The hearing shall be held upon reasonable notice to the obligee and the debtor. In no event shall such hearing officer be legally competent to render a decision as to the validity of a court order or a defense of nonpaternity. A decision of the hearing officer shall be in writing and shall set forth the debtor's and payee's rights to appeal the decision of the hearing officer to the appropriate circuit or juvenile and domestic relations district court. The decision shall be served upon the debtor in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329 or mailed to the debtor at his last known address by certified mail, return receipt requested, or the debtor may waive service of the decision at the time of the decision. A copy of such decision shall also be mailed to the obligee. Such decision shall establish the liability of the debtor, if any, and the validity of the administrative action taken.

Action by the Commissioner under the provisions of this chapter to collect such support debt shall be

valid and enforceable during the pendency of any appeal. The Commissioner may file and serve liens pursuant to §§ 63.1-1927 and 63.2-1928 during the pendency of the hearing or thereafter, whether or not appealed. Further action under § 63.2-1929 may be taken prior to any hearing or appeal. If the decision is in favor of the debtor, all money collected during the pendency of the appeal shall be returned to the debtor in accordance with procedures adopted by the Board.

§ 63.2-1943. Appeal from decision of hearing officer.

An appeal may be taken by filing a written notice of appeal with the clerk of the court having proper jurisdiction to review the decision of the hearing officer. The clerk shall send reasonable notice of such appeal, which shall include the date and time of the hearing, to the appellee or to the Department when, at the request of another state's child support agency, it is acting on behalf of a nonresident obligee. A nonresident obligee for whom the Department is acting is not required to appear at the hearing. Evidence relative to the support obligation may be taken from a nonresident obligee by deposition and presented by the Department at the hearing. Such appeal shall be taken within ten days of receipt of the hearing officer's decision.

From the decision of the hearing officer provided for in clause (iii) of subsection B of § 63.2-1924, and §§ 63.2-1916, 63.2-1929, and 63.2-1942 there shall be an appeal de novo to the juvenile and domestic relations district court of the jurisdiction wherein the appellant resides. If the appellant is a nonresident, venue on appeal shall be where the appellee resides. If both the appellant and the appellee are nonresidents, venue shall be where the property of the obligor is located or where the place of business of the obligor's employer is located; if more than one venue is available, then the appellant shall elect the place of venue.

An appeal shall be to the circuit court with respect to determinations under the Set-off Debt Collection Act pursuant to Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1 concerning state income tax overpayments and with respect to federal income tax set-off actions.

Article 8.

Administrative Remedies.

§ 63.2-1944. Employee debtor rights protected; limitation.

No employer shall discharge an employee for reason that a voluntary assignment of earnings under § 63.2-1945 has been presented in settlement of a support debt or that a support lien or order to withhold and deliver has been served against such employee's earnings.

§ 63.2-1945. Assignment of earnings to be honored; inapplicability of § 40.1-31.

Any person, firm, corporation, association, political subdivision or department of the Commonwealth employing a person owing a support debt or obligation, shall honor an assignment of earnings to satisfy or retire a support debt or obligation of such person when ordered by the Commissioner by a payroll deduction order conforming to § 20-79.3. The rights and obligations of employees with respect to an order issued pursuant to this section are set out in § 20-79.3. Payment of moneys pursuant to an assignment of earnings presented by the Commissioner shall serve as full acquittance under any contract of employment, and the Commonwealth warrants and represents that it shall defend and hold harmless such action taken pursuant to such assignment of earnings. The Commissioner shall be released from liability for improper receipt of moneys under an assignment of earnings upon return of any moneys so received.

Any assignment of earnings presented under this section shall not be subject to the requirements set forth in § 40.1-31.

§ 63.2-1946. Virginia New Hire Reporting Center; State Directory of New Hires; reporting by employers.

A. Each employing unit shall report to the Virginia New Hire Reporting Center, operated under the authority of the Division of Child Support Enforcement, the initial employment of any person, as defined in § 60.2-212, within twenty days of such employment. The Center shall operate and maintain the Virginia State Directory of New Hires. The Center is authorized to share information with the Virginia Employment Commission.

B. Employers who transmit such reports magnetically or electronically shall, if necessary, report by two monthly transmissions not less than twelve days nor more than sixteen days apart. Employers that have employees who are employed in two or more states and that transmit reports magnetically or electronically may comply by designating one state in which such employer has employees to which the employer will transmit the report, and transmitting such report to such state. Such employers shall notify the federal Secretary of Health and Human Services in writing as to which state is designated for the purpose of sending reports and shall provide a copy of that notification to the Virginia New Hire Reporting Center.

C. Employers shall not report an employee of a state agency performing intelligence or counterintelligence functions, if the head of such agency has determined that such reporting could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

D. Information to be provided shall include only that information that is required by federal law. This information may be provided by mailing a copy of the employee's W-4 form, transmitting information magnetically or electronically in the prescribed format or by any other means determined by the Virginia New Hire Reporting Center to result in timely reporting. Within three business days after the date information regarding a newly hired employee is entered into the Virginia State Directory of New Hires, the Center shall furnish the information to the National Directory of New Hires established under § 453 (i) of the Social Security Act, as amended.

E. The Board shall have the authority to adopt regulations as necessary, consistent with the federal law and its implementing regulations, to administer this provision, including any exemptions and waivers which are needed to reduce unnecessary or burdensome reporting.

Article 9.

Legal Representation.

§ 63.2-1947. Assistance by Office of the Attorney General.

The attorney for the Commonwealth or other attorney who has responsibility for representing a local department and local board may, with the prior consent of the Attorney General, obtain the assistance of the Office of the Attorney General in the conduct of litigation arising under this chapter.

§ 63.2-1948. Payment by Department for legal services.

Notwithstanding any provision of §§ 2.2-2814, 2.2-2815, 2.2-2816, 2.2-2823, 2.2-2824, 2.2-2825 or § 2.2-2826 to the contrary, whenever there shall be authorized by law an attorney for the Commonwealth, the Department may contract with the county or city or combination thereof for whom such attorney for the Commonwealth is authorized regarding the payment by the Department of the salary, expenses, including secretarial services, and allowances or part thereof of such attorney, as shall be approved by the Compensation Board, for the entire time devoted to these duties. Any such contract may provide that the county, city or combination thereof shall pay such salary, expenses and allowances and that the Department shall reimburse such county or city therefor. The amount of such salary, expenses and allowances shall be set by the Compensation Board as provided by law.

Whenever there is in any county or city a county attorney or city attorney whose duties consist of legal services with respect to the provisions of this chapter, the Department may contract with such county or city regarding the duties of such county or city attorney and regarding payment by the Department of the salary, expenses, including secretarial services, and allowances or part thereof of such attorney for the time devoted to these duties. Any such contract may provide that the county or city shall pay such salary, expenses and allowances and that the Department shall reimburse such county or city therefor.

§ 63.2-1949. Authority of city, county, or attorney for the Commonwealth to represent the Department.

In order to carry out the responsibilities of the Department imposed under this chapter, any city or county attorney is authorized to represent the Department in any civil proceeding necessary for the establishment, modification, enforcement, or collection of support obligations and any attorney for the Commonwealth is authorized to represent the Department in any civil or criminal proceeding necessary for the establishment, modification, enforcement, or collection of support obligations.

§ 63.2-1950. Child support enforcement privatized legal services.

A. The Attorney General shall provide and supervise legal services to the Division of Child Support Enforcement in child support enforcement cases to establish, obligate, enforce and collect child support. In addition to other methods of providing legal services as may be authorized by law, the Attorney General may contract with private attorneys to provide such services as special counsel pursuant to § 2.2-510 or to conduct programs to evaluate the costs and benefits of the privatization of such legal services. The compensation for such special and private counsel shall be paid out of funds received by the Division of Child Support Enforcement as provided by state and federal law and such reasonable attorney's fees as may be recovered. The Attorney General may also use collection agencies as may be necessary and cost-effective to pursue fully the recovery of all costs and fees authorized by § 63.2-1960 in proceedings to enforce child support obligations.

B. By July 1 of each year, the Office of the Attorney General shall submit a written report to the Governor and General Assembly with a detailed summary and evaluation of the privatization of child support enforcement programs.

Article 10.

Financial Operations.

§ 63.2-1951. Interest on support payments collected.

The Department shall pay interest to the payee as provided in this section on certain spousal or child support payments it collects which have been ordered by a court or established by administrative order to be paid to or through the Department to the payee and for which the Department has an assignment of rights or has been given an authorization to seek or enforce a support obligation as those

terms are defined in §§ 63.2-100 and 63.2-1900. Such interest shall accrue, at the legal rate as established by § 6.1-330.53, on all support payments collected by the Department and paid to the payee more than thirty days following the end of the month in which the payment was received by the Department in nonpublic assistance cases. Interest shall be charged to the Department on such payments if the Department has an established case and if the obligor or payor provides identifying information including the Department case number or the noncustodial parent's name and correct social security number.

§ 63.2-1952. Interest on debts due.

Interest at the judgment interest rate as established by § 6.1-330.54 on any arrearage pursuant to an order being enforced by the Department pursuant to this chapter shall be collected by the Commissioner except in the case of a minor obligor during the period of his minority. The Commissioner shall maintain interest balance due accounts.

§ 63.2-1953. Disposition of funds collected as debts to Department.

Funds collected as a debt to the Department pursuant to the provisions of this chapter shall be placed in a special fund of the Department for use in the enforcement of the provisions of this chapter.

§ 63.2-1954. Distribution of collection.

Support payments received by the Department or the Department's designee shall be prorated among the obligees based upon the current amounts due pursuant to more than one judicial or administrative order, or a combination thereof, with any remaining amounts prorated among the obligees with orders for accrued arrearages in the same proration as the current support payments. All support payments received by the Department or the Department's designee shall be distributed to the obligee within two business days of receipt, provided that sufficient information accompanies the payment or is otherwise available to the Department within that time to identify the obligee and the place to which distribution should be made. The term "business day" means any day that is not a Saturday, Sunday, legal holiday or other day on which state offices are closed.

§ 63.2-1955. Distribution of collections from federal tax refund offsets.

Distribution of amounts collected by the Department as a result of an offset made under the Federal Tax Refund Offset Program (P.L. 97-35, as amended) to satisfy non-TANF past-due support from a federal tax refund based upon a joint return shall be made when the Department is notified that the unobligated spouse's proper share of the refund has been paid or 180 days following receipt of the offset, whichever is earlier. The Department shall establish procedures for the prompt refund of any incorrect offset amounts and the compensation of unobligated spouses for the payment of their shares to obligees.

§ 63.2-1956. Release of excess funds to debtor.

Whenever any person, firm, corporation, association, political subdivision or department of the Commonwealth has in its possession earnings, deposits, accounts, or balances in excess of the amount of the debt claimed by the Department plus $100, such person, firm, corporation, association, political subdivision or department of the Commonwealth may, without liability under this chapter, release such excess to the debtor.

§ 63.2-1957. Unidentifiable moneys held in special account.

All moneys collected in fees, costs, attorney fees, interest payments, or other funds received by the Commissioner which are unidentifiable as to the support account against which they should be credited, shall be held in a special fund from which the Commissioner may make disbursement for any costs or expenses incurred in the administration or enforcement of the provisions of this chapter.

§ 63.2-1958. Charging off support debts as uncollectible.

Any support debt due the Department pursuant to § 63.2-1908 that the Commissioner deems uncollectible may be transferred from accounts receivable to a doubtful account, cease to be accounted as an asset, and discharged from its records.

§ 63.2-1959. Department exempt from fees.

No filing or recording fees, court fees, or fees for service of process shall be required from the Department by any clerk, auditor, sheriff or other local officer for the filing of any actions or documents authorized by this chapter or, for the service of any summons or other process in any action or proceeding authorized by this chapter.

§ 63.2-1960. Recovery of certain fees and costs.

The Department shall have the authority to assess and recover from the noncustodial parent in proceedings to enforce child support obligations against the noncustodial parent, reasonable attorney's fees. The Department shall also have the authority to assess and recover costs in such cases. However, the Department shall not be entitled to recover attorney's fees or costs in any case in which the noncustodial parent prevails.

The Department shall have the authority to assess and recover the actual costs of genetic testing against the noncustodial parent if paternity is established. Where an original test is contested and

additional testing is requested, the Department may require advance payment by the contestant. The genetic testing costs shall be set at the rate charged the Department by the provider of genetic testing services.

The Department shall have the authority to assess and recover the actual costs of intercept programs from the noncustodial parent. The intercept programs' costs shall be set at the rate actually charged the Department.

The Department shall have the authority to assess and recover the actual costs of fees for service of process, and seizure and sale pursuant to a levy on a judgment in enforcement actions from the noncustodial parent.

The fees and costs that may be recovered pursuant to this section may be collected using any mechanism provided by this chapter.

Subtitle VI.

Grant Programs and Funds.

CHAPTER 20.

NEIGHBORHOOD ASSISTANCE ACT.

§ 63.2-2000. Definitions.

As used in this chapter:

"Business firm" means any corporation, partnership, electing small business (Subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in this Commonwealth subject to tax imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1.

"Community services" means any type of counseling and advice, emergency assistance, medical care, provision of basic necessities, or services designed to minimize the effects of poverty, furnished primarily to impoverished people.

"Contracting services" means the provision, by a business firm licensed by the Commonwealth as a contractor under Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, of labor or technical advice to aid in the development, construction, renovation, or repair of (i) homes of impoverished people or (ii) buildings used by neighborhood organizations.

"Education" means any type of scholastic instruction or scholarship assistance to an individual who is impoverished.

"Housing assistance" means furnishing financial assistance, labor, material, or technical advice to aid the physical improvement of the homes of impoverished people.

"Impoverished people" means people in Virginia approved as such by the Board. Such approval shall be made on the basis of generally recognized low-income criteria used by federal and state agencies.

"Job training" means any type of instruction to an individual who is impoverished that enables him to acquire vocational skills so that he can become employable or able to seek a higher grade of employment.

"Neighborhood assistance" means providing community services, education, housing assistance, or job training.

"Neighborhood organization" means any local, regional or statewide organization whose primary function is providing neighborhood assistance for impoverished people, and holding a ruling from the Internal Revenue Service of the United States Department of the Treasury that the organization is exempt from income taxation under the provisions of §§ 501 (c) (3) and 501 (c) (4) of the Internal Revenue Code of 1986, as amended from time to time, or any organization defined as a community action agency in the Economic Opportunity Act of 1964 (42 U.S.C. § 2701 et seq.), or any housing authority as defined in § 36-3.

"Professional services" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and shall include, but shall not be limited to, the personal services rendered by medical doctors, dentists, architects, professional engineers, certified public accountants and attorneys-at-law.

§ 63.2-2001. Public policy; business firms; donations.

It is hereby declared to be public policy of the Commonwealth to encourage business firms to make donations to neighborhood organizations for the benefit of impoverished people.

§ 63.2-2002. Proposals; regulations; tax credits authorized; amount for programs.

A. Any neighborhood organization may submit a proposal to the Commissioner requesting an allocation of tax credits for use by business firms making donations to the neighborhood organization. The proposal shall set forth the program to be conducted by the neighborhood organization, the impoverished people to be assisted, the estimated amount to be donated to the program and the plans for implementing the program.

B. The Board is hereby authorized to adopt regulations for the approval or disapproval of such

proposals by neighborhood organizations and for determining the value of the donations. Such regulations shall contain a requirement that an annual audit be provided by the neighborhood organization as a prerequisite for approval. Such regulations shall provide for the equitable allocation of the available amount of tax credits among the approved proposals submitted by neighborhood organizations. The regulations shall also provide that at least ten percent of the available amount of tax credits each year shall be allocated to qualified programs proposed by neighborhood organizations not receiving allocations in the preceding year; however, if the amount of tax credits for qualified programs requested by such neighborhood organizations is less than ten percent of the available amount of tax credits, the unallocated portion of such ten percent of the available amount of tax credits shall be allocated to qualified programs proposed by other neighborhood organizations.

C. If the Commissioner approves a proposal submitted by a neighborhood organization, the organization shall make the allocated tax credit amounts available to business firms making donations to the approved program. A neighborhood organization shall not assign or transfer an allocation of tax credits to another neighborhood organization without the approval of the Commissioner.

D. The total amount of tax credits granted for programs approved under this chapter for each fiscal year shall not exceed eight million dollars; however, $2,750,000 shall be allocated to education programs conducted by neighborhood organizations. Such allocation of tax credits to education programs shall constitute the minimum amount of tax credits to be allocated to education programs. However, if the amount of tax credits requested by neighborhood organizations for qualified education programs is less than $2,750,000, the balance of such amount shall be allocated to other types of qualified programs. Tax credits shall not be authorized after fiscal year 2004.

§ 63.2-2003. Tax credit; amount; limitation; carry over.

A. The Commissioner shall certify to the Department of Taxation, or in the case of business firms subject to a tax under Article 1 (§ 58.1-2500 et seq.) of Chapter 25 or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1, to the State Corporation Commission, the applicability of the tax credit provided herein for a business firm.

B. A business firm shall be eligible for a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1, in an amount equal to forty-five percent of the value of the money, property, professional services, and contracting services donated by the business firm during its taxable year to neighborhood organizations for programs approved pursuant to § 63.2-2002. No tax credit of less than $400 shall be granted for any donation, and a business firm shall not be allowed a tax credit in excess of $175,000 per taxable year. No tax credit shall be granted to any business firm for donations to a neighborhood organization providing job training or education for individuals employed by the business firm. Any tax credit not usable for the taxable year the donation was made may be carried over to the extent usable for the next five succeeding taxable years or until the full credit has been utilized, whichever is sooner. Credits granted to a partnership, electing small business (Subchapter S) corporation, or limited liability company shall be allocated to their individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

C. A tax credit shall be issued by the Commissioner to a business firm upon receipt of a certification made by a neighborhood organization to whom tax credits were allocated for an approved program pursuant to § 63.2-2002. The certification shall identify the type and value of the donation received and the business firm making the donation. A business firm shall be eligible for a tax credit under this section only to the extent that sufficient tax credits allocated to the neighborhood organization for an approved project are available.

§ 63.2-2004. Donations of professional services.

A. A sole proprietor, partnership or limited liability company engaged in the business of providing professional services shall be eligible for a tax credit under this chapter based on the time spent by the proprietor or a partner or member, respectively, who renders professional services to a program which has received an allocation of tax credits from the Commissioner. The value of the professional services, for purposes of determining the amount of the tax credit allowable, rendered by the proprietor or a partner or member to an approved program shall not exceed the lesser of (i) the reasonable cost for similar services from other providers or (ii) $125 per hour.

B. A business firm shall be eligible for a tax credit under this chapter for the time spent by a salaried employee who renders professional services to an approved program. The value of the professional services, for purposes of determining the amount of tax credit allowed to a business firm for time spent by its salaried employee in rendering professional services to an approved project, shall be equal to the salary that such employee was actually paid for the period of time that such employee rendered professional services to the approved program.

C. Notwithstanding any provision of this chapter limiting eligibility for tax credits to business firms,

physicians, dentists, nurse practitioners, physician assistants, optometrists, dental hygienists and pharmacists licensed pursuant to Title 54.1 who provide health care services within the scope of their licensure, without charge, at a clinic that has received an allocation of tax credits from the Commissioner and is organized in whole or in part for the delivery of health care services without charge, or to a clinic operated not for profit providing health care services for charges not exceeding those set forth in a scale prescribed by the State Board of Health pursuant to § 32.1-11 for charges to be paid by persons based upon ability to pay, shall be eligible for a tax credit pursuant to § 63.2-2003 based on the time spent in providing health care services at such clinic. The value of such services, for purposes of determining the amount of the tax credit allowable, rendered by the physician, dentist, nurse practitioner, physician assistant, optometrist, dental hygienist, or pharmacist, shall not exceed the lesser of (i) the reasonable cost for similar services from other providers or (ii) $125 per hour.

§ 63.2-2005. Donations of contracting services.

A. A sole proprietor, partnership or limited liability company engaged in the business of providing contracting services shall be eligible for a tax credit under this chapter based on the time spent by the proprietor or a partner or member, respectively, who renders contracting services to a program which has received an allocation of tax credits from the Commissioner. The value of the contracting services, for purposes of determining the amount of the tax credit allowable, rendered by the proprietor or a partner or member to an approved program shall not exceed the lesser of (i) the reasonable cost for similar services from other providers or (ii) fifty dollars per hour.

B. A business firm shall be eligible for a tax credit under this chapter for the time spent by a salaried employee who renders contracting services to an approved program. The value of the contracting services, for purposes of determining the amount of tax credit allowed to a business firm for time spent by its salaried employee in rendering contracting services to an approved project, shall be equal to the salary that such employee was actually paid for the period of time that such employee rendered contracting services to the approved program.

§ 63.2-2006. Donations by individuals.

For purposes of this section, the term "individual" means the same as that term is defined in § 58.1-302, but excluding any individual included in the definition of a "business firm" as such term is defined in § 63.2-2000.

A. Notwithstanding any provision of this chapter limiting eligibility for tax credits, an individual making a monetary donation to a neighborhood organization approved under this chapter shall be eligible for a credit against taxes imposed by § 58.1-320 as provided in this section.

B. Notwithstanding any provision of this chapter specifying the amount of a tax credit, a tax credit issued to an individual making a monetary donation to an approved project shall be equal to forty-five percent of such monetary donation; however, tax credits shall not be issued for any monetary donation less than $900 in a taxable year and no more than $750 in tax credit shall be issued to an individual or to married persons in a taxable year.

C. An individual shall be eligible for a tax credit under this section only to the extent that sufficient tax credits allocated to the neighborhood organization approved under this chapter are available. Up to one million dollars in tax credits may be issued to individuals by the Department in each fiscal year under this section through June 30, 2004. In order to ensure that the limited amounts of tax credits available under this section in any fiscal year are not oversubscribed and are allocated in an orderly and equitable manner among the approved proposals submitted by neighborhood organizations under this chapter, the Department shall establish policies and procedures for the issuance of tax credits under this section.

D. The amount of credit allowed pursuant to this section, if such credit has been issued by the Department, shall not exceed the tax imposed pursuant to § 58.1-320 for such taxable year. Any credit not usable for the taxable year may be carried over for credit against the individual's income taxes until the earlier of (i) the full amount of the credit is used or (ii) the expiration of the fifth taxable year after the taxable year in which the tax credit has been issued to such individual. If an individual that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding taxable year, such individual shall be considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

E. A tax credit shall be issued by the Commissioner to an individual only upon receipt of a certification made by a neighborhood organization to whom tax credits were allocated for an approved program pursuant to § 63.2-2002. The certification shall identify the amount of the monetary donation received and the individual making the donation.

F. The tax credit allowed pursuant to this section shall be taken by the individual only to the extent he has not claimed a deduction for such amount on his federal income tax return.

CHAPTER 21.

FAMILY AND CHILDREN'S TRUST FUND.

§ 63.2-2100. Creation of fund.

There is hereby created a Family and Children's Trust Fund. The purpose of the fund shall be to provide for the support and development of services for the prevention and treatment of violence within families. This goal shall be achieved through public and private collaboration.

§ 63.2-2101. Members of Board; terms; vacancies; meetings.

A. The Family and Children's Trust Fund shall be administered by a Board of Trustees. The Board of Trustees shall consist of fifteen members appointed by the Governor and subject to confirmation by the General Assembly. The Board members shall represent the Commonwealth at large and shall have knowledge and experience in child abuse and neglect, adult abuse and neglect, and domestic violence programs, finance and fiscal management and other related areas. The Commissioner shall serve as a permanent member of the Board of Trustees. The Board shall elect a chairman.

B. Initially, five appointments to the Board shall be for a term of four years, five appointments shall be for a term of three years, and five appointments shall be for a term of two years; thereafter, all appointments shall be for terms of four years. Appointments to fill vacancies other than by expiration of term shall be for the unexpired term. No member shall be eligible to serve more than two successive four-year terms.

C. The Board shall meet as frequently as necessary to fulfill its duties but not less than once a year.

§ 63.2-2102. Powers and duties of the Board.

The Board of Trustees shall have the authority to:

1. Encourage, approve and accept gifts, contributions, bequests, or grants in cash or otherwise from any source, public or private, to carry out the purposes of the Family and Children's Trust Fund;

2. Administer and disburse any funds available to the Family and Children's Trust Fund;

3. Engage in fund-raising activities to expand and perpetuate the Family and Children's Trust Fund;

4. Monitor the use of funds to ensure the accountability of the recipients of funds;

5. Coordinate activities with other state efforts to prevent and treat violence within families;

6. Encourage public awareness activities concerning violence within families;

7. Adopt bylaws and other internal rules for the efficient management of the Family and Children's Trust Fund; and

8. Administer all matters necessary and convenient to carry out the powers and duties expressly given herein.

§ 63.2-2103. Management of the Family and Children's Trust Fund.

All funds received shall be paid to the treasury of Virginia, which shall be custodian of the Family and Children's Trust Fund. Such funds shall be set aside as a separate fund and shall be managed by the Treasurer of Virginia at the discretion of the Board. The net earnings of the Trust Fund shall not inure to the benefit of any private person or entity, except that the Board of Trustees may authorize payment of reasonable compensation for goods provided and services rendered and may authorize disbursements in furtherance of the purpose set forth in § 63.2-2100. The Trust Fund shall not carry on propaganda, or otherwise attempt, to influence legislation as a substantial part of its activities; and it shall not participate or intervene, by publishing or distributing statements or by other means, in any political campaign on behalf of any candidate for public office. If the Trust Fund is dissolved, any assets remaining after payment, or provision for payment, of all claims against it shall be distributed to the Commonwealth for public purposes.

CHAPTER 22.

VIRGINIA CAREGIVERS GRANT PROGRAM.

§ 63.2-2200. Definitions.

As used in this chapter, unless the context requires otherwise:

"Activities of daily living" or "ADLs" means bathing, dressing, toileting, transferring, bowel control, bladder control, and eating/feeding.

"Assistance" means aid that is required to be provided by another person in order to safely complete the activity.

"Care for a mentally or physically impaired relative" means assistance with the activities of daily living provided to such relative when the relative has been screened and has been found to be eligible, in accordance with relevant state regulations, for placement and Medicaid reimbursement for services in an assisted-living facility or a nursing home or for receiving community-based long-term care services.

"Caregiver" means an adult with a Virginia adjusted gross income of not more than $50,000 who provides care for a mentally or physically impaired relative within the Commonwealth.

"Fund" means the Virginia Caregivers Grant Fund established by § 63.2-2202.

"Mentally or physically impaired relative" means a relative who is a resident of Virginia that requires assistance with two or more activities of daily living during more than half the year.

"Relative" means a spouse, child, father, mother, sibling, or other person who is related by blood, marriage or adoption.

§ 63.2-2201. Caregivers Grant Program established.

A. From January 1, 2000, through December 31, 2005, any caregiver who provides care for a mentally or physically impaired relative shall be eligible to receive an annual caregivers grant in the amount of $500. The grants under this chapter shall be paid from the Fund, as provided in this chapter, to the caregiver during the calendar year immediately following the calendar year in which the care for a mentally or physically impaired relative was provided. The total amount of grants to be paid under this chapter for any year shall not exceed the amount appropriated by the General Assembly to the Fund for payment to caregivers for such year.

B. Only one grant shall be allowed annually for each mentally or physically impaired relative receiving care under the provisions of this section. Multiple caregivers providing care to the same mentally or physically impaired relative shall be eligible to share the $500 grant as mutually agreed. However, only one caregiver may submit a grant application for the relative. A caregiver providing care to more than one eligible relative shall submit a separate grant application for each relative receiving care.

C. The mentally or physically impaired relative being cared for may live in the caregiver's home or in his own home but shall not be receiving Medicaid-reimbursed community long-term care services, other than on a temporary or periodic basis, or living in a nursing home or other assisted living facility where assistance with ADLs is already provided and the cost of such assistance is included in the monthly bill or rental fee.

§ 63.2-2202. Virginia Caregivers Grant Fund established.

There is hereby established a special fund in the state treasury to be known as the Virginia Caregivers Grant Fund, which shall be administered by the Department. The Fund shall include such moneys as may be appropriated by the General Assembly from time to time and designated for the Fund. The Fund shall be used solely for the payment of grants to caregivers pursuant to this chapter. Unallocated moneys in the Fund in any year shall remain in the Fund and be available for allocation for grants under this chapter in ensuing fiscal years.

§ 63.2-2203. Grant application process; administration.

A. Grant applications shall be submitted by caregivers to the Department between February 1 and May 1 of the year following the calendar year in which the care for a mentally or physically impaired relative was provided. Failure to meet the application deadline shall render the caregiver ineligible to receive a grant for care provided during such calendar year. For filings by mail, the postmark cancellation shall govern the date of the filing determination.

B. Applications for grants shall include (i) proof of the caregiver's income; (ii) certification by the private physician who has screened the mentally or physically impaired relative and found him to be eligible, in accordance with relevant state regulations, for placement in an assisted-living facility or a nursing home or for receiving community long-term care services; (iii) the mentally or physically impaired relative's place of residence; and (iv) such other relevant information as the Department may reasonably require. Any caregiver applying for the grant pursuant to this chapter shall affirm, by signing and submitting his application for a grant, that the mentally or physically impaired relative for whom he provided care and the care provided meet the criteria set forth in this chapter. As a condition of receipt of a grant, a caregiver shall agree to make available to the Department for inspection, upon request, all relevant and applicable documents to determine whether the caregiver meets the requirements for the receipt of grants as set forth in this chapter, and to consent to the use by the Department of all relevant information relating to eligibility for the requested grant.

C. The Department shall review applications for grants and determine the amount of the grant to be allocated to each caregiver. The Department shall allocate moneys in the following order of priority: (i) first, to unpaid grant amounts carried forward from prior years because caregivers did not receive the full amount of any grant to which they were eligible in a prior year and (ii) then to other eligible applicants. If the moneys in the Fund are less than the amount of grants to which applicants in any class of priority are eligible, the moneys in the Fund shall be apportioned among eligible applicants in such class pro rata, based upon the amount of the grant for which an applicant is eligible and the amount of money in the Fund available for allocation to such class.

D. If a caregiver is allocated less than the full amount of a grant for which he is eligible in any year, the caregiver shall not be eligible for the deficiency in that year, but the unpaid portion of the grant to which the caregiver was eligible shall be carried forward by the Department to the following year, during which it shall be in the first class of priority as provided in subsection C. A caregiver shall have no claim against the Commonwealth with respect to any grant authorized by this chapter.

E. The Department shall certify to the Comptroller the amount of grant to be allocated to eligible caregiver applicants. Payments shall be made by check issued by the State Treasurer on warrant of the

Comptroller. The Comptroller shall not draw any warrants to issue checks for this program without a specific legislative appropriation as specified in conditions and restrictions on expenditures in the appropriation act.

F. Actions of the Department relating to the review, allocation and awarding of grants shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 4 of § 2.2-4002. Decisions of the Department shall be final and not subject to review or appeal.

§ 63.2-2204. Confidentiality of information.

Except in accordance with proper judicial order or as otherwise provided by law, any employee or former employee of the Department shall not divulge any information acquired by him in the performance of his duties with respect to the income or grant eligibility of any caregiver submitted pursuant to this chapter. The provisions of this section shall not be applicable to (i) acts performed or words spoken or published in the line of duty under law; (ii) inquiries and investigations to obtain information as to the implementation of this chapter by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information shall be privileged; or (iii) the publication of statistics so classified as to prevent the identification of particular caregivers.

2. That the provisions of former Article 2 (§ 63.1-183 et seq.) of Chapter 9 of Title 63.1 shall be an uncodified act for the period commencing October 1, 2002, and expiring on October 1, 2004, as follows:

§ 1. Short title.

This act shall be known as and may be cited as the "District Homes for Aged, Indigent, Infirm, and Incapacitated Persons Act."

§ 2. Establishment of a statewide system; encouraging establishment of district homes.

The State Board of Social Services is authorized to organize and establish a statewide system of public homes for the care and maintenance of indigent aged, infirm or incapacitated persons. In establishing such system the State Board shall include therein existing city, county and district homes which meet the standards required by the State Board. The State Board shall encourage the establishment of district homes as hereinafter provided.

§ 3. Local boards may establish homes; conformation to state standards required.

Notwithstanding any provision of law to the contrary, local boards of social services are authorized to organize, establish and operate public homes for the care and maintenance of indigent, aged, infirm or incapacitated persons. Such homes established shall be funded with no state funds but shall conform with all statutory requirements provided for such homes in this chapter.

§ 4. Authority to establish.

The governing bodies of any two or more counties in this Commonwealth, or the governing bodies of any one or more counties and one or more cities in this Commonwealth, may establish a home for the care and maintenance of indigent aged, infirm or incapacitated persons, to be known as district home for the counties of . . . . . ., or district home for the county or counties of . . . . . ., and city or cities of . . . . . ., as the case may be.

§ 5. Members of home board; compensation and expenses.

Each such district home shall be controlled by a board to consist of at least one representative from each county and city, which representative may be a member of the governing body of the county or city, composing the district, but where a county or city shall have more than 20,000 inhabitants its representative shall have one vote and an additional vote for every 20,000 inhabitants or fractional part thereof over 10,000; provided, that no city shall have more votes in any district than the combined votes of the counties composing the districts.

The representatives from the counties and cities shall be elected by the respective governing bodies thereof. Such representatives shall be entitled to necessary expenses incurred, including mileage as provided by general law, in attending meetings of the board, and in addition each may receive an allowance of $15 per day for each day that he shall be in attendance on the board, such allowance, however, not to exceed in any one year the sum of $180 to be paid by the counties and cities, respectively. The accounts for such expenses and allowances shall be made out and verified by affidavits of the representatives and attested by the secretary of the board.

§ 6. Funds for purchase and erection of home.

The governing bodies of the respective counties and cities in the Commonwealth for which such district homes are established are authorized to sell and convey by proper deed all the real estate held by them for the use, benefit and maintenance of their poor, and to sell all personal property used for that purpose, and out of the proceeds to appropriate so much as may be required to purchase and erect district homes as hereinafter provided.

The necessary funds, however, to purchase and to erect the district homes, may be appropriated by

the governing bodies of the respective counties and cities for which such district homes are established from the general funds of such counties and cities.

§ 7. Duty to appoint members of board.

It shall be the duty of the several governing bodies of the counties and cities that elect to adopt the provisions of this article to appoint, as soon thereafter as practicable, the members of the boards provided for by this article, and which shall be known as the district home board for the counties of . . . . . or counties and cities of . . . . . .

§ 8. Organization and duties of board; proportionate payment and ownership.

The district home board shall, as soon as possible after appointment, upon call of representatives of any participating city or county, assemble at the time and place named in the call, organize by the election of a chairman and secretary and proceed as soon as possible to establish such district home. The several counties and cities establishing the district home shall pay for the same in proportion to their respective populations and shall hold and own the same in the same proportion.

§ 9. Election of superintendent, physician and assistants; meetings and powers of board.

Each district home board shall elect a suitable superintendent, a competent physician and necessary assistants for the conduct and management of the home, and shall fix their salaries, having due regard to the number of residents occupying the home. The district board shall meet at least twice a year for the conduct of such business as may be required by the district home, and shall have the general conduct and management of its affairs, and shall meet at the call of the chairman whenever he shall deem it necessary, or upon call issued by a majority of the board. In the calls for special meetings the matters to be considered shall be set out, but any business may be transacted which shall at such special meeting receive a two-thirds vote of the entire board, although not mentioned in the call.

§ 10. Employment for compensation of persons convicted of certain offenses prohibited; criminal records check required; suspension or revocation of license.

A. A licensed district home for adults shall not hire for compensated employment, persons who have been convicted of murder, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, pandering as set out in § 18.2-355, obscenity offenses as set out in § 18.2-374.1 or § 18.2-379, crimes against nature involving children as set out in § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, or abuse or neglect of an incapacitated adult as set out in § 18.2-369. However, a home for adults may hire an applicant convicted of one misdemeanor specified in this section not involving abuse or neglect or moral turpitude, provided five years have elapsed following the conviction.

Any person desiring to work at a licensed district home for adults shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation regarding any such offense shall be guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

The district home for adults shall, within thirty days of employment, obtain for any compensated employees an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. The provisions of this section shall be enforced by the Department of Social Services. If an applicant is denied employment because of convictions appearing on his criminal history record, the hiring facility shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a clearance pursuant to this section.

B. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

§ 11. Persons to be sent to home; payment of expenses.

The several counties or the several counties and cities of the Commonwealth, establishing the district homes hereinbefore provided for, shall admit indigent aged, infirm and incapacitated persons to the district homes, and pay the expenses of the maintenance of such home in proportion to the number of residents from the several counties and cities.

§ 12. Board to control home and make rules and regulations.

The board having charge of each home shall have the control and management of its home, and may make such rules and regulations in respect thereto, as shall not be inconsistent with the laws of the Commonwealth.

§ 13. Report of board.

As soon after the first day of January of each year as may be practical the district board shall cause a report to be made of the home, which shall show the number and age of the residents, the condition of health of each one of them, the county or city of his or her residence, the average number during the year, the amount received from each county and city composing the district, and the amount expended, and an itemized statement of all expenditures. It shall also show an inventory and appraisement of the property on hand at the commencement of the year, and shall give an account of receipts from the farm and disbursements on account of it, and such other matters as may be required by the governing body of any county or any city included in the district, or by the State Board of Social Services. A copy of the report of the board shall be furnished to the governing bodies of the counties and of the city or cities within the district, and to the State Board.

§ 14. Withdrawal from consolidation.

The governing body of any county or city in this Commonwealth, which has combined or consolidated with any other county or city, either or both, to establish a home for the care and maintenance of the poor, under the provisions of any existing laws may withdraw from such consolidation or combination and may dispose of all property or property rights acquired by reason of such combination or consolidation to some other county or city, such property or property rights to be jointly used with the remaining owners for the purpose for which the home was established. Such ownership shall be subject to the rules and regulations of the home board, subject, however, to approval of the circuit court of such county or city, entered of record, upon a petition of such governing body herein mentioned, duly filed, setting forth the facts upon which it is desired to make the change herein provided for.

If the county or city that wishes to withdraw from the combination or consolidation is unable to agree with the remaining members as to the value of the withdrawing member's interest, then the appropriate court shall ascertain the terms and conditions of withdrawal of such county or city. In exercising its authority under this paragraph, the court may adopt and utilize the policies, procedures and remedies applicable to suits in equity.

The board of directors of such home shall be made parties defendant to such petition and each of the members of the board shall be served with a copy of the petition.

§ 15. Transfer of portion of interest of county to city created therefrom.

Whenever any city shall have been created from within the boundaries of any county that has combined or consolidated with any other county or city to establish a district home pursuant to this act, the governing body of the county from which such city was formed may transfer to such city a portion of its interest in such home which portion shall be determined proportionately according to the population of such city and county. The governing body of such city may elect a properly qualified representative to the district home board as soon as practicable, after any such transfer. Such city may thereafter use the home jointly with the other owners thereof for the purpose for which the home was established, in accordance with the provisions of this article and subject to the rules and regulations of the home board.

3. That whenever any of the conditions, requirements, provisions or contents of any section or chapter of Title 63.1 or any other title of the Code of Virginia as such titles existed prior to October 1, 2002, are transferred in the same or modified form to a new section or chapter of Title 63.2 or any other title of the Code and whenever any such former section or chapter is given a new number in title 63.2 or any other title, all references to any such former section or chapter of Title 63.1 or other title appearing in this Code shall be construed to apply to the new or renumbered section or chapter containing such conditions, requirements, provisions, contents or portions thereof.

4. That the regulations of any department or agency affected by the revision of Title 63.1 or such other titles in effect on the effective date of this act shall continue in effect to the extent that they are not in conflict with this act and shall be deemed to be regulations adopted under this act.

5. That this title revision of Title 63.1 as Title 63.2 shall not be construed to require the reappointment of any officer or any member of a board, council, committee or other appointed body referred to in Title 63.2 and each such officer and member shall continue to serve for the term for which appointed pursuant to the provisions of Title 63.1.

6. That the provisions of § 30-152 of the Code of Virginia shall apply to the codification of Title 63.2 so as to give effect to other laws enacted by the 2002 Session of the General Assembly notwithstanding the delay in the effective date of this act.

7. That the repeal of Title 63.1, effective as of October 1, 2002, shall not affect any act or offense

done or committed, or any penalty incurred, or any right established, accrued or accruing on or before such date, or any proceeding, prosecution, suit or action pending on that day. Except as otherwise provided in this act, neither the repeal of Title 63.1 nor the enactment of Title 63.2 shall apply to offenses committed prior to October 1, 2002, and prosecution for such offenses shall be governed by the prior law, which is continued in effect for that purpose. For the purpose of this enactment, an offense was committed prior to October 1, 2002, if any of the essential elements of the offense occurred prior thereto.

8. That any notice given, recognizance taken, or process or writ issued before October 1, 2002, shall be valid although given, taken or to be returned to a day after such date, in like manner as if Title 63.2 had been effective before the same was given, taken or issued.

9. That if any clause, sentence, paragraph, subdivision or section of Title 63.2 shall be adjudged in any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or section thereof directly involved in the controversy in which the judgment shall have been rendered, and to this end the provisions of Title 63.2 are declared severable.

10. That § 20-49.9 of the Code of Virginia is repealed.

11. That Title 63.1 (§§ 63.1-1.1 through 63.1-343) is repealed.

12. That the provisions of this act shall become effective on October 1, 2002.