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**SENATE BILL NO. 687**

Offered January 15, 2008

*A BILL to amend and reenact §§ 2.2-212, 2.2-213, 2.2-214, 2.2-223, 2.2-507, 2.2-701, 2.2-704, 2.2-705, 2.2-1124, 2.2-1204, 2.2-1207, 2.2-1839, as it is currently effective and as it may become effective, 2.2-2411, 2.2-2525, 2.2-2648, 2.2-2649, 2.2-2664, 2.2-2696, 2.2-2818, 2.2-2905, 2.2-3705.3, 2.2-3705.5, 2.2-4344, 2.2-5201, 2.2-5206, 2.2-5300, 4.1-305, 8.01-654.2, 9.1-111, 9.1-901, 15.2-964, 15.2-2291, 15.2-5386, 16.1-241, 16.1-269.1, 16.1-275, 16.1-278.8, 16.1-278.8:01, 16.1-278.11, 16.1-280, 16.1-293.1, 16.1-336, 16.1-345, 16.1-356, 16.1-357, 16.1-361, 18.2-10, 18.2-73, 18.2-74, 18.2-251, 18.2-251.01, 18.2-252, 18.2-254, 18.2-254.1, 18.2-258.1, 18.2-271.2, 18.2-308.1:1, 18.2-308.2:2, 18.2-369, 19.2-123, 19.2-169.1, 19.2-169.2, 19.2-169.3, 19.2-169.5, 19.2-175, 19.2-182.2, 19.2-182.3, 19.2-182.8, 19.2-182.9, 19.2-182.13, 19.2-182.16, 19.2-218.1, 19.2-264.3:1, 19.2-264.3:1.1, 19.2-264.3:1.2, 19.2-264.3:3, 19.2-301, 19.2-302, 19.2-389, 19.2-390, 20-88, 22.1-7, 22.1-205, 22.1-209.2, 22.1-213, 22.1-214.2, 22.1-214.3, 22.1-215, 22.1-217.1, 22.1-253.13:2, 22.1-272.1, 22.1-319, 23-38.2, 25.1-100, 29.1-313, 32.1-45.1, 32.1-59, 32.1-64.1, 32.1-65, 32.1-73.7, 32.1-102.1, 32.1-122.5, 32.1-124, 32.1-125.1, 32.1-127.01, 32.1-127.1:03, 32.1-127.1:04, 32.1-135.2, 32.1-276.3, 32.1-276.8, 32.1-283, 32.1-283.1, 32.1-325, 32.1-351.2, 36-96.6, 37.2-100, 37.2-200, 37.2-203, 37.2-204, 37.2-300, 37.2-303, 37.2-306, 37.2-315, 37.2-316, 37.2-317, 37.2-318, 37.2-319, 37.2-403, 37.2-409, 37.2-416, 37.2-423, 37.2-500, 37.2-504, 37.2-505, 37.2-506, 37.2-508, 37.2-509, 37.2-600, 37.2-601, 37.2-605, 37.2-608, 37.2-716, 37.2-802, 37.2-806, 37.2-900, 37.2-900.1, 37.2-909, 37.2-912, 37.2-919, 37.2-1018, 37.2-1101, 38.2-3323, 38.2-3409, 38.2-3412.1, 38.2-3418.5, 46.2-400, 46.2-401, 46.2-1229, 51.5-1, 51.5-2, 51.5-3, 51.5-14.1, 51.5-30, 51.5-31, 51.5-39.2, 51.5-39.7, 51.5-39.8, 51.5-39.12, 53.1-32, 53.1-40.2, 53.1-136, 53.1-145, 54.1-2715, 54.1-2726, 54.1-2970, 54.1-2982, 54.1-2986, 54.1-2987.1, 54.1-3408, 54.1-3408.01, 54.1-3437.1, 54.1-3506, 56-484.19, 57-2.02, 57-60, 63.2-100, 63.2-1503, 63.2-1528, 63.2-1603, 63.2-1709, 63.2-1726, 63.2-1735, 63.2-1805, 66-18, and 66-20 of the Code of Virginia, relating to replacing the term "mental retardation" with the term "intellectual disability."*

Patron—Howell

Referred to Committee on Education and Health

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

**1. That §§ 2.2-212, 2.2-213, 2.2-214, 2.2-223, 2.2-507, 2.2-701, 2.2-704, 2.2-705, 2.2-1124, 2.2-1204, 2.2-1207, 2.2-1839, as it is currently effective and as it may become effective, 2.2-2411, 2.2-2525, 2.2-2648, 2.2-2649, 2.2-2664, 2.2-2696, 2.2-2818, 2.2-2905, 2.2-3705.3, 2.2-3705.5, 2.2-4344, 2.2-5201, 2.2-5206, 2.2-5300, 4.1-305, 8.01-654.2, 9.1-111, 9.1-901, 15.2-964, 15.2-2291, 15.2-5386, 16.1-241, 16.1-269.1, 16.1-275, 16.1-278.8, 16.1-278.8:01, 16.1-278.11, 16.1-280, 16.1-293.1, 16.1-336, 16.1-345, 16.1-356, 16.1-357, 16.1-361, 18.2-10, 18.2-73, 18.2-74, 18.2-251, 18.2-251.01, 18.2-252, 18.2-254, 18.2-254.1, 18.2-258.1, 18.2-271.2, 18.2-308.1:1, 18.2-308.2:2, 18.2-369, 19.2-123, 19.2-169.1, 19.2-169.2, 19.2-169.3, 19.2-169.5, 19.2-175, 19.2-182.2, 19.2-182.3, 19.2-182.8, 19.2-182.9, 19.2-182.13, 19.2-182.16, 19.2-218.1, 19.2-264.3:1, 19.2-264.3:1.1, 19.2-264.3:1.2, 19.2-264.3:3, 19.2-301, 19.2-302, 19.2-389, 19.2-390, 20-88, 22.1-7, 22.1-205, 22.1-209.2, 22.1-213, 22.1-214.2, 22.1-214.3, 22.1-215, 22.1-217.1, 22.1-253.13:2, 22.1-272.1, 22.1-319, 23-38.2, 25.1-100, 29.1-313, 32.1-45.1, 32.1-59, 32.1-64.1, 32.1-65, 32.1-73.7, 32.1-102.1, 32.1-122.5, 32.1-124, 32.1-125.1, 32.1-127.01, 32.1-127.1:03, 32.1-127.1:04, 32.1-135.2, 32.1-276.3, 32.1-276.8, 32.1-283, 32.1-283.1, 32.1-325, 32.1-351.2, 36-96.6, 37.2-100, 37.2-200, 37.2-203, 37.2-204, 37.2-300, 37.2-303, 37.2-306, 37.2-315, 37.2-316, 37.2-317, 37.2-318, 37.2-319, 37.2-403, 37.2-409, 37.2-416, 37.2-423, 37.2-500, 37.2-504, 37.2-505, 37.2-506, 37.2-508, 37.2-509, 37.2-600, 37.2-601, 37.2-605, 37.2-608, 37.2-716, 37.2-802, 37.2-806, 37.2-900, 37.2-900.1, 37.2-909, 37.2-912, 37.2-919, 37.2-1018, 37.2-1101, 38.2-3323, 38.2-3409, 38.2-3412.1, 38.2-3418.5, 46.2-400, 46.2-401, 46.2-1229, 51.5-1, 51.5-2, 51.5-3, 51.5-14.1, 51.5-30, 51.5-31, 51.5-39.2, 51.5-39.7, 51.5-39.8, 51.5-39.12, 53.1-32, 53.1-40.2, 53.1-136, 53.1-145, 54.1-2715, 54.1-2726, 54.1-2970, 54.1-2982, 54.1-2986, 54.1-2987.1, 54.1-3408, 54.1-3408.01, 54.1-3437.1, 54.1-3506, 56-484.19, 57-2.02, 57-60, 63.2-100, 63.2-1503, 63.2-1528, 63.2-1603, 63.2-1709, 63.2-1726, 63.2-1735, 63.2-1805, 66-18, and 66-20 of the Code of Virginia are amended and reenacted as follows:**

§ 2.2-212. Position established; agencies for which responsible; additional powers.

The position of Secretary of Health and Human Resources (the Secretary) is created. The Secretary of Health and Human Resources shall be responsible to the Governor for the following agencies: Department of Health, Department for the Blind and Vision Impaired, Department of Health Professions,

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59 Department for the Aging, Department of Mental Health, ~~Mental Retardation~~*Intellectual Disability* and  
60 Substance Abuse Services, Department of Rehabilitative Services, Department of Social Services,  
61 Department of Medical Assistance Services, Child Day-Care Council, Virginia Department for the Deaf  
62 and Hard-of-Hearing, the Office of Comprehensive Services for Youth and At-Risk Youth and Families,  
63 and the Assistive Technology Loan Fund Authority. The Governor may, by executive order, assign any  
64 other state executive agency to the Secretary of Health and Human Resources, or reassign any agency  
65 listed above to another Secretary.

66 Unless the Governor expressly reserves such power to himself, the Secretary shall (i) serve as the  
67 lead Secretary for the coordination and implementation of the long-term care policy of the  
68 Commonwealth, working with the Secretaries of Transportation, Commerce and Trade, and Education,  
69 and the Commissioner of Insurance, to facilitate interagency service development and implementation,  
70 communication and cooperation, (ii) serve as the lead Secretary for the Comprehensive Services Act for  
71 At-Risk Youth and Families, working with the Secretary of Education and the Secretary of Public Safety  
72 to facilitate interagency service development and implementation, communication and cooperation, and  
73 (iii) coordinate the disease prevention activities of agencies in the Secretariat to ensure efficient,  
74 effective delivery of health related services and financing.

75 § 2.2-213. Secretary of Health and Human Resources to develop certain criteria.

76 In order to respond to the needs of substance abusing women and their children, the Secretary shall  
77 develop criteria for (i) enhancing access to publicly funded substance abuse treatment programs in order  
78 to effectively serve pregnant substance abusers; (ii) determining when a drug-exposed child may be  
79 referred to the early intervention services and tracking system available through Part C of the Individuals  
80 with Disabilities Education Act, 20 U.S.C. § 1431 et seq.; (iii) determining the appropriate circumstances  
81 for contact between hospital discharge planners and local departments of social services for referrals for  
82 family-oriented prevention services, when such services are available and provided by the local social  
83 services agency; and (iv) determining when the parent of a drug-exposed infant, who may be  
84 endangering a child's health by failing to follow a discharge plan, may be referred to the child protective  
85 services unit of a local department of social services.

86 The Secretary shall consult with the Commissioner of Mental Health, ~~Mental Retardation~~*Intellectual*  
87 *Disability* and Substance Abuse Services, the Commissioner of Social Services, the Commissioner of  
88 Health, community services boards, behavioral health authorities local departments of social services,  
89 and local departments of health in developing the criteria required by this section.

90 § 2.2-214. Responsibility of certain agencies within the Secretariat; review of regulations.

91 The Boards of Health, Mental Health, ~~Mental Retardation~~*Intellectual Disability* and Substance Abuse  
92 Services, Social Services, and Medical Assistance Services and the Department of Rehabilitative Services  
93 shall review their regulations and policies related to service delivery in order to ascertain and eliminate  
94 any discrimination against individuals infected with human immunodeficiency virus.

95 § 2.2-223. Interagency Drug Offender Screening and Assessment Committee.

96 The Secretary shall establish and chair an Interagency Drug Offender Screening and Assessment  
97 Committee to oversee the drug screening, assessment and treatment provisions of §§ 16.1-273,  
98 16.1-278.1, 16.1-278.8, 18.2-251.01, 18.2-251, 18.2-252, 19.2-299 and 19.2-299.2 for defendants  
99 convicted in the criminal courts of the Commonwealth. The Committee shall include the Directors or  
100 Commissioners of the Department of Corrections; Department of Criminal Justice Services; Department  
101 of Juvenile Justice; Department of Mental Health, ~~Mental Retardation~~*Intellectual Disability*, and  
102 Substance Abuse Services; the Virginia Alcohol Safety Action Program; and the Virginia Criminal  
103 Sentencing Commission. The Committee shall have the responsibility to: (i) assist and monitor agencies  
104 in implementing the above-listed Code of Virginia sections, (ii) ensure quality and consistency in the  
105 screening and assessment process, (iii) promote interagency coordination and cooperation in the  
106 identification and treatment of drug abusing or drug dependent offenders, (iv) implement an evaluation  
107 process and conduct periodic program evaluations, and (v) make recommendations to the Governor and  
108 General Assembly regarding proposed expenditures from the Drug Assessment Fund. The Committee  
109 shall report on the status and effectiveness of offender drug screening, assessment and treatment to the  
110 Virginia State Crime Commission and the House Committees on Courts of Justice and Appropriations,  
111 and the Senate Committees on Courts of Justice and Finance by January 1 of each year.

112 § 2.2-507. Legal service in civil matters.

113 A. All legal service in civil matters for the Commonwealth, the Governor, and every state  
114 department, institution, division, commission, board, bureau, agency, entity, official, court, or judge,  
115 including the conduct of all civil litigation in which any of them are interested, shall be rendered and  
116 performed by the Attorney General, except as provided in this chapter and except for any litigation  
117 concerning a justice or judge initiated by the Judicial Inquiry and Review Commission. No regular  
118 counsel shall be employed for or by the Governor or any state department, institution, division,  
119 commission, board, bureau, agency, entity, or official. The Attorney General may represent personally or  
120 through one or more of his assistants any number of state departments, institutions, divisions,

commissions, boards, bureaus, agencies, entities, officials, courts, or judges that are parties to the same transaction or that are parties in the same civil or administrative proceeding and may represent multiple interests within the same department, institution, division, commission, board, bureau, agency, or entity. Upon request of the local attorney for the Commonwealth, the Attorney General may provide legal service in civil matters for soil and water conservation district directors or districts.

B. The Attorney General may represent personally or through one of his assistants any of the following persons who are made defendant in any civil action for damages arising out of any matter connected with their official duties:

1. Members, agents or employees of the Alcoholic Beverage Control Board;
2. Agents inspecting or investigators appointed by the State Corporation Commission;
3. Agents, investigators, or auditors employed by the Department of Taxation;
4. Members, agents or employees of the State Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services Board, the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, the State Board of Health, the State Department of Health, the Department of General Services, the State Board of Social Services, the Department of Social Services, the State Board of Corrections, the Department of Corrections, the State Board of Juvenile Justice, the Department of Juvenile Justice, the Virginia Parole Board, or the Department of Agriculture and Consumer Services;
5. Persons employed by the Commonwealth Transportation Board;
6. Persons employed by the Commissioner of Motor Vehicles;
7. Persons appointed by the Commissioner of Marine Resources;
8. Police officers appointed by the Superintendent of State Police;
9. Conservation police officers appointed by the Department of Game and Inland Fisheries;
10. Third impartial panel members appointed to hear a teacher's grievance pursuant to § 22.1-312;
11. Staff members or volunteers participating in a court-appointed special advocate program pursuant to Article 5 (§ 9.1-151 et seq.) of Chapter 1 of Title 9.1;
12. Any emergency medical service agency that is a licensee of the Department of Health in any civil matter and any guardian ad litem appointed by a court in a civil matter brought against him for alleged errors or omissions in the discharge of his court-appointed duties; or
13. Conservation officers of the Department of Conservation and Recreation.

Upon request of the affected individual, the Attorney General may represent personally or through one of his assistants any basic or advanced emergency medical care attendant or technician possessing a valid certificate issued by authority of the State Board of Health in any civil matter in which a defense of immunity from liability is raised pursuant to § 8.01-225.

C. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal service to be rendered by him or one of his assistants, he may employ special counsel for this purpose, whose compensation shall be fixed by the Attorney General. The compensation for such special counsel shall be paid out of the funds appropriated for the administration of the board, commission, division or department being represented or whose members, officers, inspectors, investigators, or other employees are being represented pursuant to this section. Notwithstanding any provision of this section to the contrary, the Supreme Court may employ its own counsel in any matter arising out of its official duties in which it, or any justice, is a party.

§ 2.2-701. Nature of long-term care services.

A. The long-term care services shall include, but not be limited to, the following:

1. A balanced range of health, social, and supportive services to deliver long-term care services to persons aged 60 and older with chronic illnesses or functional impairments;
2. Meaningful choice, increased functional ability, and affordability as determining factors in defining long-term care service needs, which needs shall be determined by a uniform system for comprehensively assessing the needs and preferences of individuals requiring such services;
3. Service delivery, consistent with the needs and preferences of individuals requiring such services, that occurs in the most independent, least restrictive, and most appropriate living situation possible; and
4. Opportunities for self-care and independent living, as appropriate, by encouraging all long-term care programs to maximize self-care and independent living within the mainstream of life in the community.

B. Such services shall include, but not be limited to, the following categories: socialization services, health care services, nutrition services, daily living services, educational services, housing services, transportation services, and supportive services.

C. As used in this section:

"Daily living services" includes homemaker, companion, personal care and chore services, home repair, weatherization and adult day care.

"Educational services" includes information on the long-term care services provided by agencies of

the Commonwealth, its localities and private sector agencies, and public information as provided in § 2.2-213.1.

"Health care services" includes home health care and community medical care.

"Housing services" includes community-based residential opportunities and retrofitting existing housing as needed.

"Nutrition services" includes home-delivered meals, food stamps, and congregate meals.

"Socialization services" includes telephone reassurance, friendly visiting, and congregate meals.

"Supportive services" includes adult protective services, mental health and ~~mental retardation~~ services, *services for persons with intellectual disabilities*, counseling services and legal aid.

"Transportation services" includes readily available access to public transportation or area coordinated para-transit systems.

§ 2.2-704. Responsibility of Department for complaints regarding long-term care services.

The Department or its designee shall investigate complaints regarding community services that are designed to provide long-term care to older persons and are rendered by the Department of Health, the Department of Social Services, the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, the area agencies on aging or any private nonprofit or proprietary agency.

Nothing in this section shall affect the services provided by local departments of welfare or social services pursuant to § 63.2-1605.

§ 2.2-705. Access to residents, facilities and patients' records by Office of State Long-Term Care Ombudsman.

The entity designated by the Department to operate the programs of the Office of the State Long-Term Care Ombudsman pursuant to the Older Americans Act, Public Law 100-175, shall, in the investigation of complaints referred to the program, have the same access to (i) residents, facilities and patients' records of licensed adult care residences in accordance with § 63.2-1706 and (ii) patients, facilities and patients' records of nursing facilities or nursing homes in accordance with § 32.1-25, and shall have access to the patients, residents and patients' records of state hospitals operated by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services. However, if a patient is unable to consent to the review of his medical and social records and has no legal guardian, such representatives shall have appropriate access to such records in accordance with this section. Notwithstanding the provisions of § 32.1-125.1, the entity designated by the Department to operate the programs of the Office of the State Long-Term Care Ombudsman shall have access to nursing facilities and nursing homes and state hospitals in accordance with this section. Access to residents, facilities and patients' records shall be during normal working hours except in emergency situations.

§ 2.2-1124. Disposition of surplus materials.

A. "Surplus materials" means personal property including, but not limited to, materials, supplies, equipment, and recyclable items, but shall not include property as defined in § 2.2-1147 that is determined to be surplus. Surplus materials shall not include finished products that a mental health facility or ~~mental retardation~~ facility *for the intellectually disabled* sells for the benefit of its patients or residents, provided that (i) most of the supplies, equipment, or products have been donated to the facility; (ii) the patients or residents of the facility have substantially altered the supplies, equipment, or products in the course of occupational or other therapy; and (iii) the substantial alterations have resulted in a finished product.

B. The Department shall establish procedures for the disposition of surplus materials from departments, divisions, institutions, and agencies of the Commonwealth. Such procedures shall:

1. Permit surplus materials to be transferred between or sold to departments, divisions, institutions, or agencies of the Commonwealth;

2. Permit surplus materials to be sold to Virginia charitable 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 (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;

3. Permit public sales or auctions, including online public auctions, provided that the procedures provide for sale to all political subdivisions and any volunteer rescue squad or volunteer fire department established pursuant to § 15.2-955 any surplus materials prior to such public sale or auction;

4. Permit surplus motor vehicles to be sold prior to public sale or auction to local social service departments for the purpose of resale at cost to TANF recipients;

5. Permit surplus materials to be sold to Virginia charitable corporations granted tax-exempt status under § 501(c) (3) of the Internal Revenue Code and operating as children's homes;

6. Permit donations to political subdivisions of the Commonwealth under the circumstances specified in this section;

7. Permit other methods of disposal when (a) the cost of the sale will exceed the potential revenue to be derived therefrom or (b) the surplus material is not suitable for sale;

8. Permit any dog especially trained for police work to be sold at an appropriate price to the handler who last was in control of the dog, which sale shall not be deemed a violation of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.);

9. Permit the transfer of surplus clothing to an appropriate department, division, institution, or agency of the Commonwealth for distribution to needy individuals by and through local social services boards;

10. Encourage the recycling of paper products, beverage containers, electronics, and used motor oil;

11. Require the proceeds from any sale or recycling of surplus materials be promptly deposited into the state treasury in accordance with § 2.2-1802 and report the deposit to the State Comptroller;

12. Permit donations of surplus computers and related equipment to public schools in the Commonwealth and Virginia charitable corporations granted tax-exempt status under § 501(c) (3) of the Internal Revenue Code and providing services to persons with disabilities, at-risk youths, or low-income families. For the purposes of this subdivision, "at-risk youths" means school-age children approved eligible to receive free or reduced price meals in the federally funded lunch program;

13. Permit surplus materials to be transferred or sold, prior to public sale or auction, to public television stations located in the state and other nonprofit organizations approved for the distribution of federal surplus materials;

14. Permit a public institution of higher education to dispose of its surplus materials at the location where the surplus materials are held and to retain any proceeds from such disposal, provided that the institution meets the conditions prescribed in subsection B of § 23-38.88 and § 23-38.112 (regardless of whether or not the institution has been granted any authority under Subchapter 3 (§ 23-38.91 et seq.) of Chapter 4.10 of Title 23); and

15. Require, to the extent practicable, the recycling and disposal of computers and other information technology assets. Additionally, for computers or information technology assets that may contain confidential state data or personal identifying information of citizens of the Commonwealth, the Department shall ensure all policies for the transfer or other disposition of computers or information technology assets are consistent with data and information security policies developed by the Virginia Information Technologies Agency.

C. The Department shall dispose of surplus materials pursuant to the procedures established in subsection B or permit any department, division, institution, or agency of the Commonwealth to dispose of its surplus materials consistent with the procedures so established. No surplus materials shall be disposed of without prior consent of the head of the department, division, institution, or agency of the Commonwealth in possession of such surplus materials or the Governor.

D. Departments, divisions, institutions, or agencies of the Commonwealth or the Governor may donate surplus materials only under the following circumstances:

1. Emergencies declared in accordance with § 44-146.18:2 or 44-146.28;

2. As set forth in the budget bill as defined by § 2.2-1509, provided that (a) the budget bill contains a description of the surplus materials, the method by which the surplus materials shall be distributed, and the anticipated recipients, and (b) such information shall be provided by the Department to the Department of Planning and Budget in sufficient time for inclusion in the budget bill;

3. When the market value of the surplus materials, which shall be donated for a public purpose, is less than \$500; however, the total market value of all surplus materials so donated by any department, division, institution, or agency shall not exceed 25 percent of the revenue generated by such department's, division's, institution's, or agency's sale of surplus materials in the fiscal year, except these limits shall not apply in the case of surplus computer equipment and related items donated to Virginia public schools; or

4. During a local emergency, upon written request of the head of a local government or a political subdivision in the Commonwealth to the head of a department, division, institution, or agency.

E. On or before October 1 of each year, the Department shall prepare, and file with the Secretary of the Commonwealth, a plan that describes the expected disposition of surplus materials in the upcoming fiscal year pursuant to subdivision B 6.

§ 2.2-1204. Health insurance program for employees of local governments, local officers, teachers, etc.; definitions.

A. The Department shall establish a plan or plans, hereinafter "plan" or "plans", subject to the approval of the Governor, for providing health insurance coverage for employees of local governments, local officers, teachers, and retirees, and the dependents of such employees, officers, teachers and retirees. The plan or plans shall be rated separately from the plan established pursuant to § 2.2-2818 to provide health and related insurance coverage for state employees. Participation in such insurance plan or plans shall be (i) voluntary, (ii) approved by the participant's respective governing body, or by the local school board in the case of teachers, and (iii) subject to regulations adopted by the Department. In

305 addition, at the option of a governing body or school board that has elected to participate in the health  
306 insurance plan or plans offered by the Department, the governing body or school board may elect to  
307 participate in the long-term care or other benefit program that the Department may make available to the  
308 governing body or school board.

309 B. The plan established by the Department shall satisfy the requirements of the Virginia Public  
310 Procurement Act (§ 2.2-4300 et seq.), shall consist of a flexible benefits structure that permits the  
311 creation of multiple plans of benefits and may provide for separate rating groups based upon criteria  
312 established by the Department. The Department shall adopt regulations regarding the establishment of  
313 such a plan or plans, including, but not limited to, requirements for eligibility, participation, access and  
314 egress, mandatory employer contributions and financial reserves, and the administration of the plan or  
315 plans. The Department may engage the services of other professional advisors and vendors as necessary  
316 for the prudent administration of the plan or plans. The assets of the plan or plans, together with all  
317 appropriations, premiums and other payments, shall be deposited in the employee health insurance fund,  
318 from which payments for claims, premiums, cost containment programs and administrative expenses  
319 shall be withdrawn from time to time. The assets of the fund shall be held for the sole benefit of the  
320 employee health insurance fund. The fund shall be held in the state treasury. Any interest on unused  
321 balances in the fund shall revert back to the credit of the fund. The State Treasurer shall charge  
322 reasonable fees to recover the actual costs of investing the assets of the plan or plans.

323 In establishing the participation requirements, the Department may provide that those employees,  
324 officers, and teachers without access to employer-sponsored health care coverage may participate in the  
325 plan. It shall collect all premiums directly from the employers of such employees, officers, and teachers.

326 C. In the event that the financial reserves of the plan fall to an unacceptably low level as determined  
327 by the Department, it shall have the authority to secure from the State Treasurer a loan sufficient to  
328 raise the reserve level to one that is considered adequate. The State Treasurer may make such a loan, to  
329 be repaid on such terms and conditions as established by him.

330 D. For the purposes of this section:

331 "Employees of local governments" shall include all officers and employees of the governing body of  
332 any county, city or town, and the directing or governing body of any political entity, subdivision, branch  
333 or unit of the Commonwealth or of any commission or public authority or body corporate created by or  
334 under an act of the General Assembly specifying the power or powers, privileges or authority capable of  
335 exercise by the commission or public authority or body corporate, as distinguished from §§ 15.2-1300,  
336 15.2-1303, or similar statutes, provided that the officers and employees of a social services department,  
337 welfare board, mental health, ~~mental retardation~~ *intellectual disability* and substance abuse services board,  
338 or library board of a county, city, or town shall be deemed to be employees of local government.

339 "Local officer" means the treasurer, registrar, commissioner of the revenue, attorney for the  
340 Commonwealth, clerk of a circuit court, sheriff, or constable of any county or city or deputies or  
341 employees of any of the preceding local officers.

342 "Teacher" means any employee of a county, city, or other local public school board.

343 E. Any stock and cash distributed to the Commonwealth pursuant to the conversion of Blue Cross  
344 and Blue Shield of Virginia, doing business as Trigon Blue Cross Blue Shield, from a mutual insurance  
345 company to a stock corporation known as Trigon Healthcare, Inc., that is directly attributable to the  
346 health insurance plan or plans established for employees of local governments, local officers, teachers,  
347 and retirees, and the dependents of such employees, officers, teachers and retirees, pursuant to  
348 subsection A (hereinafter referred to as the "local choice plan distribution") shall be deposited in the  
349 state treasury to the credit of the employee health insurance fund to be used as provided in this  
350 subsection. Such distribution shall not include any cash paid by Blue Cross and Blue Shield of Virginia  
351 or its successor to the Commonwealth in connection with such conversion that was assumed as general  
352 fund revenue in Chapter 912 of the 1996 Acts of Assembly. All other stock and cash received by the  
353 Commonwealth pursuant to such conversion of Blue Cross and Blue Shield of Virginia to a stock  
354 corporation shall be allocated as provided in subsection B of § 23-284.

355 The State Treasurer shall sell any stock received pursuant to the local choice plan distribution as  
356 soon as practicable following its receipt, subject to any lockup period or other restriction on its sale, and  
357 the proceeds therefrom shall be deposited in the state treasury to the credit of the employee health  
358 insurance fund. Notwithstanding any other provision of law to the contrary, the State Treasurer shall not  
359 be liable for any losses incurred from the sale or distribution of such stock.

360 The Department of Human Resource Management shall use any stock, or the proceeds therefrom, and  
361 cash received pursuant to the local choice plan distribution to reduce premiums payable by employers  
362 participating in a plan or plans established pursuant to subsection A. In setting health insurance  
363 premiums for such plan or plans, the Director of the Department of Human Resource Management shall  
364 allocate the value of such stock, or proceeds therefrom, and cash among each participating employer.  
365 Such allocation shall be based on the proportionate amounts of premiums previously paid by each  
366 participating employer. If a participating employer withdraws from such plan or plans before all of the

value allocated to it has been used for the benefit of the participating employer, the remaining value shall be transferred to such participating employer upon his withdrawal.

§ 2.2-1207. Long-term care insurance program for employees of local governments, local officers, and teachers.

A. The Department shall establish a plan or plans, hereinafter "plan" or "plans," subject to the approval of the Governor, for providing long-term care insurance coverage for employees of local governments, local officers, and teachers. The plan or plans shall be rated separately from the plan developed pursuant to § 51.1-513.1 to provide long-term care insurance coverage for state employees. Participation in such insurance plan or plans shall be (i) voluntary, (ii) approved by the participant's respective governing body, or by the local school board in the case of teachers, and (iii) subject to regulations adopted by the Department.

B. The Department shall adopt regulations regarding the establishment of such a plan or plans, and the administration of the plan or plans.

C. For the purposes of this section:

"Employees of local governments" shall include all officers and employees of the governing body of any county, city or town, and the directing or governing body of any political entity, subdivision, branch or unit of the Commonwealth or of any commission or public authority or body corporate created by or under an act of the General Assembly specifying the power or powers, privileges or authority capable of exercise by the commission or public authority or body corporate, as distinguished from §§ 15.2-1300, 15.2-1303, or similar statutes, provided that the officers and employees of a social services department, welfare board, mental health, ~~mental retardation~~ *intellectual disability* and substance abuse services board, or library board of a county, city, or town shall be deemed to be employees of local government.

"Local officer" means the treasurer, registrar, commissioner of the revenue, attorney for the Commonwealth, clerk of a circuit court, sheriff, or constable of any county or city or deputies or employees of any of the preceding local officers.

"Teacher" means any employee of a county, city, or other local public school board.

§ 2.2-1839. (Contingent expiration date July 1, 2008 - see Editor's note) Risk management plans administered by the Department of the Treasury's Risk Management Division for political subdivisions, constitutional officers, etc.

A. The Division shall establish one or more risk management plans specifying the terms and conditions for coverage, subject to the approval of the Governor, and which plans may be purchased insurance, self-insurance or a combination of self-insurance and purchased insurance to provide protection against liability imposed by law for damages and against incidental medical payments resulting from any claim made against any county, city or town; authority, board, or commission; sanitation, soil and water, planning or other district; public service corporation owned, operated or controlled by a locality or local government authority; constitutional officer; state court-appointed attorney; any attorney for any claim arising out of the provision of pro bono legal services for custody and visitation to an eligible indigent person under a program approved by the Supreme Court of Virginia or the Virginia State Bar; any receiver for an attorney's practice appointed under § 54.1-3900.01 or 54.1-3936; affiliate or foundation of a state department, agency or institution; any clinic that is organized in whole or primarily for the delivery of health care services without charge; any local chapter or program of the Meals on Wheels Association of America or any area agency on aging, providing meal and nutritional services to persons who are elderly, homebound, or disabled; any individual serving as a guardian or limited guardian as defined in § 37.2-1000 for any consumer of a community services board or behavioral health authority or any patient or resident of a state facility operated by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services; or the officers, agents or employees of any of the foregoing for acts or omissions of any nature while in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.

For the purposes of this section, "delivery of health care services without charge" shall be deemed to include the delivery of dental, medical or other health services when a reasonable minimum fee is charged to cover administrative costs.

B. Participation in the risk management plan shall be voluntary and shall be approved by the participant's respective governing body or by the State Compensation Board in the case of constitutional officers, by the office of the Executive Secretary of the Virginia Supreme Court in the case of state court-appointed attorneys, including attorneys appointed to serve as receivers under § 54.1-3900.01 or 54.1-3936, or attorneys under Virginia Supreme Court or Virginia State Bar approved programs, by the Commissioner of the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services for any individual serving as a guardian or limited guardian for any patient or resident of a state facility operated by such Department or by the executive director of a community services board or behavioral health authority for any individual serving as a guardian or limited guardian

428 for a consumer of such board or authority, and by the Division. Upon such approval, the Division shall  
429 assume sole responsibility for plan management, compliance, or removal. The Virginia Supreme Court  
430 shall pay the cost for coverage of eligible persons performing services in approved programs of the  
431 Virginia Supreme Court or the Virginia State Bar. The Department of Mental Health, ~~Mental~~  
432 ~~Retardation~~*Intellectual Disability* and Substance Abuse Services shall be responsible for paying the cost  
433 of coverage for eligible persons performing services as a guardian or limited guardian for any patient or  
434 resident of a state facility operated by the Department. The applicable community services board or  
435 behavioral health authority shall be responsible for paying the cost of coverage for eligible persons  
436 performing services as a guardian or limited guardian for consumers of such board or authority.

437 C. The Division shall provide for the legal defense of participating entities and shall reserve the right  
438 to settle or defend claims presented under the plan. All prejudgment settlements shall be approved in  
439 advance by the Division.

440 D. The risk management plan established pursuant to this section shall provide for the establishment  
441 of a trust fund for the payment of claims covered under such plan. The funds shall be invested in the  
442 manner provided in § 2.2-1806 and interest shall be added to the fund as earned.

443 The trust fund shall also provide for payment of legal defense costs, actuarial costs, administrative  
444 costs, contractual costs and all other expenses related to the administration of such plan.

445 E. The Division shall, in its sole discretion, set the premium and administrative cost to be paid to it  
446 for providing a risk management plan established pursuant to this section. The premiums and  
447 administrative costs set by the Division shall be payable in the amounts at the time and in the manner  
448 that the Division in its sole discretion shall require. The premiums and administrative costs need not be  
449 uniform among participants, but shall be set so as to best ensure the financial stability of the plan.

450 F. Notwithstanding any provision to the contrary, a sheriff's department of any city or county, or a  
451 regional jail shall not be precluded from securing excess liability insurance coverage beyond the  
452 coverage provided by the Division pursuant to this section.

453 § 2.2-1839. (Contingent effective date July 1, 2008 - see Editor's note) Risk management plans  
454 administered by the Department of the Treasury's Risk Management Division for political subdivisions,  
455 constitutional officers, etc.

456 A. The Division shall establish one or more risk management plans specifying the terms and  
457 conditions for coverage, subject to the approval of the Governor, and which plans may be purchased  
458 insurance, self-insurance or a combination of self-insurance and purchased insurance to provide  
459 protection against liability imposed by law for damages and against incidental medical payments  
460 resulting from any claim made against any county, city or town; authority, board, or commission;  
461 sanitation, soil and water, planning or other district; public service corporation owned, operated or  
462 controlled by a locality or local government authority; constitutional officer; state court-appointed  
463 attorney; any attorney for any claim arising out of the provision of pro bono legal services for custody  
464 and visitation to an eligible indigent person under a program approved by the Supreme Court of Virginia  
465 or the Virginia State Bar; any receiver for an attorney's practice appointed under § 54.1-3900.01 or  
466 54.1-3936; affiliate or foundation of a state department, agency or institution; any clinic that is  
467 organized in whole or primarily for the delivery of health care services without charge; any local chapter  
468 or program of the Meals on Wheels Association of America or any area agency on aging, providing  
469 meal and nutritional services to persons who are elderly, homebound, or disabled; any individual serving  
470 as a guardian or limited guardian as defined in § 37.2-1000 for any consumer of a community services  
471 board or behavioral health authority or any patient or resident of a state facility operated by the  
472 Department of Mental Health, ~~Mental Retardation~~*Intellectual Disability* and Substance Abuse Services;  
473 any participant who satisfies the requirements of § 2.2-1839.1; or the officers, agents or employees of  
474 any of the foregoing for acts or omissions of any nature while in an authorized governmental or  
475 proprietary capacity and in the course and scope of employment or authorization.

476 For the purposes of this section, "delivery of health care services without charge" shall be deemed to  
477 include the delivery of dental, medical or other health services when a reasonable minimum fee is  
478 charged to cover administrative costs.

479 B. Participation in the risk management plans shall be voluntary and shall be approved by both the  
480 participant's respective governing body or by the State Compensation Board in the case of constitutional  
481 officers, by the office of the Executive Secretary of the Virginia Supreme Court in the case of state  
482 court-appointed attorneys, including attorneys appointed to serve as receivers under § 54.1-3900.01 or  
483 54.1-3936, or attorneys under Virginia Supreme Court or Virginia State Bar approved programs, by the  
484 Commissioner of the Department of Mental Health, ~~Mental Retardation~~*Intellectual Disability* and  
485 Substance Abuse Services for any individual serving as a guardian or limited guardian for any patient or  
486 resident of a state facility operated by such Department or by the executive director of a community  
487 services board or behavioral health authority for any individual serving as a guardian or limited guardian  
488 for a consumer of such board or authority, and by the Division. Those participants under § 2.2-1839.1  
489 shall not be required to obtain approval from any entity other than the Division. Upon such approval,



the Division shall assume sole responsibility for plan management, compliance, or removal. The Virginia Supreme Court shall pay the cost for coverage of eligible persons performing services in approved programs of the Virginia Supreme Court or the Virginia State Bar. The Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services shall be responsible for paying the cost of coverage for eligible persons performing services as a guardian or limited guardian for any patient or resident of a state facility operated by the Department. The applicable community services board or behavioral health authority shall be responsible for paying the cost of coverage for eligible persons performing services as a guardian or limited guardian for consumers of such board or authority.

C. The Division shall provide for the legal defense of participants and shall reserve the right to settle or defend claims presented under the plan. All prejudgment settlements shall be approved in advance by the Division.

D. The risk management plans established pursuant to this section shall provide for the establishment of trust funds for the payment of claims covered under such plans. The funds shall be invested in the manner provided in § 2.2-1806 and interest shall be added to the fund as earned.

Trust funds shall also provide for payment of legal defense costs, actuarial costs, administrative costs, contractual costs and all other expenses related to the administration of such plans.

E. The Division shall, in its sole discretion, set the premium, deductible, and administrative cost to be paid to it for providing risk management plans established pursuant to this section. The premiums and administrative costs set by the Division shall be payable in the amounts at the time and in the manner that the Division in its sole discretion shall require. The premiums, deductibles, and administrative costs need not be uniform among participants, but shall be set so as to best ensure the financial stability of the plans.

F. Notwithstanding any provision to the contrary, a sheriff's department of any city or county, or a regional jail shall not be precluded from securing excess liability insurance coverage beyond the coverage provided by the Division pursuant to this section.

§ 2.2-2411. Public Guardian and Conservator Advisory Board; purpose; membership; terms.

A. The Public Guardian and Conservator Advisory Board (the "Board") is established as an advisory board, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Board shall be to report to and advise the Commissioner of the Department for the Aging on the means for effectuating the purposes of this article and shall assist in the coordination and management of the local and regional programs appointed to act as public guardians and conservators pursuant to Chapter 10 (§ 37.2-1000 et seq.) of Title 37.2.

B. The Board shall consist of no more than fifteen members who shall be appointed by the Governor as follows: one representative of the Virginia Guardianship Association, one representative of the Virginia Area Agencies on Aging, one representative of the Virginia State Bar, one active or retired circuit court judge upon recommendation of the Chief Justice of the Supreme Court, one representative of the Association of Retarded Citizens, one representative of the Virginia Alliance for the Mentally Ill, one representative of the Virginia League of Social Service Executives, one representative of the Association of Community Service Boards, the Commissioner of the Department of Social Services or his designee, the Commissioner of the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services or his designee, the Director of the Virginia Office for Protection and Advocacy or his designee, and one person who is a member of the Commonwealth Council on Aging and such other individuals who may be qualified to assist in the duties of the Board.

C. The Commissioners of the Departments of Social Services and Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services or their designees, the Director of the Virginia Office for Protection and Advocacy or his designee, and the representative of the Commonwealth Council on Aging, shall serve terms coincident with their terms of office or in the case of designees, the term of the Commissioner or Director. Of the other members of the Board, five of the appointees shall serve for four-year terms and the remainder shall serve for three-year terms. No member shall serve more than two successive terms. A vacancy occurring other than by expiration of term shall be filled for the unexpired term.

D. Each year, the Board shall elect a chairman and a vice-chairman from among its members. Five members of the Board shall constitute a quorum.

E. Members shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-2823.

§ 2.2-2525. (Expires July 1, 2009) Membership; terms; quorum; meetings.

The Commission shall have a total membership of 21 nonlegislative citizen members to be appointed as follows: four nonlegislative citizen members, of whom two shall be persons with disabilities, one shall be the relative of a citizen of the Commonwealth with a disability, and one shall be a provider of services to citizens of the Commonwealth with disabilities or an advocate for persons with disabilities or for services to such persons to be appointed by the Senate Committee on Rules; six nonlegislative

citizen members, of whom three shall be persons with disabilities, one shall be the relative of a citizen of the Commonwealth with a disability, and two shall be providers of services to citizens of the Commonwealth with disabilities or an advocate for persons with disabilities or for services to such persons to be appointed by the Speaker of the House of Delegates; and 11 nonlegislative citizen members, of whom three shall be persons with disabilities, one shall be a resident of a state mental health facility, one shall be a resident of a state ~~mental retardation~~ training facility *for persons with intellectual disabilities*, one shall be a resident of a nursing facility, two shall be the relatives of citizens of the Commonwealth with disabilities, and three shall be providers of services to citizens of the Commonwealth with disabilities or an advocate for persons with disabilities or for services to such persons to be appointed by the Governor. Nonlegislative citizen members of the Commission shall be citizens of the Commonwealth.

Nonlegislative citizen members shall serve a term of four years; however, no nonlegislative citizen member shall serve more than two consecutive four-year terms. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

The Commission shall elect a chairman and vice-chairman from among its membership. A majority of the members shall constitute a quorum. The Commission shall meet not less than four times each year. The meetings of the Commission shall be held at the call of the chairman or whenever the majority of the members so request.

§ 2.2-2648. State Executive Council for Comprehensive Services for At-Risk Youth and Families; membership; meetings; powers and duties.

A. The State Executive Council for Comprehensive Services for At-Risk Youth and Families (the Council) is established as a supervisory council, within the meaning of § 2.2-2100, in the executive branch of state government.

B. The Council shall consist of one member of the House of Delegates to be appointed by the Speaker of the House and one member of the Senate to be appointed by the Senate Committee on Rules; the Commissioners of Health, of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, and of Social Services; the Superintendent of Public Instruction; the Executive Secretary of the Virginia Supreme Court; the Director of the Department of Juvenile Justice; the Director of the Department of Medical Assistance Services; the chairman of the state and local advisory team established pursuant to § 2.2-5202; two local government representatives to include a member of a county board of supervisors or a city council and a county administrator or city manager, to be appointed by the Governor; a private provider representative from a facility that maintains membership in an association of providers for children's or family services and receives funding as authorized by the Comprehensive Services Act (§ 2.2-5200 et seq.), to be appointed by the Governor, who may appoint from nominees recommended by the Virginia Coalition of Private Provider Associations; and a parent representative. The parent representative shall be appointed by the Governor for a term not to exceed three years and shall not be an employee of any public or private program that serves children and families. Appointments of legislative members shall be for terms coincident with their terms of office. Legislative members shall not be included for the purposes of constituting a quorum.

C. The Council shall be chaired by the Secretary of Health and Human Resources or a designated deputy who shall be responsible for convening the council. The Council shall meet, at a minimum, quarterly, to oversee the administration of this article and make such decisions as may be necessary to carry out its purposes. Legislative members shall receive compensation as provided in § 30-19.12 and nonlegislative citizen members shall receive compensation for their services as provided in §§ 2.2-2813 and 2.2-2825.

D. The Council shall have the following powers and duties:

1. Hire and supervise a director of the Office of Comprehensive Services for At-Risk Youth and Families;

2. Appoint the members of the state and local advisory team in accordance with the requirements of § 2.2-5201;

3. Provide for the establishment of interagency programmatic and fiscal policies developed by the Office of Comprehensive Services for At-Risk Youth and Families, which support the purposes of the Comprehensive Services Act (§ 2.2-5200 et seq.), through the promulgation of regulations by the participating state boards or by administrative action, as appropriate;

4. Provide for a public participation process for programmatic and fiscal guidelines and dispute resolution procedures developed for administrative actions that support the purposes of the Comprehensive Services Act (§ 2.2-5200 et seq.). The public participation process shall include, at a minimum, 60 days of public comment and the distribution of these guidelines and procedures to all

interested parties;

5. Oversee the administration of and consult with the Virginia Municipal League and the Virginia Association of Counties about state policies governing the use, distribution and monitoring of moneys in the state pool of funds and the state trust fund;

6. Provide for the administration of necessary functions that support the work of the Office of Comprehensive Services for At-Risk Youth and Families;

7. Review and take appropriate action on issues brought before it by the Office of Comprehensive Services for At-Risk Youth and Families, Community Policy and Management Teams (CPMTs), local governments, providers and parents;

8. Advise the Governor and appropriate Cabinet Secretaries on proposed policy and operational changes that facilitate interagency service development and implementation, communication and cooperation;

9. Provide administrative support and fiscal incentives for the establishment and operation of local comprehensive service systems;

10. Oversee coordination of early intervention programs to promote comprehensive, coordinated service delivery, local interagency program management, and co-location of programs and services in communities. Early intervention programs include state programs under the administrative control of the state executive council member agencies;

11. Oversee the development and implementation of a mandatory uniform assessment instrument and process to be used by all localities to identify levels of risk of Comprehensive Services Act (CSA) youth;

12. Oversee the development and implementation of uniform guidelines to include initial intake and screening assessment, development and implementation of a plan of care, service monitoring and periodic follow-up, and the formal review of the status of the youth and the family;

13. Oversee the development and implementation of uniform guidelines for documentation for CSA-funded services;

14. Review and approve a request by a CPMT to establish a collaborative, multidisciplinary team process for referral and reviews of children and families pursuant to § 2.2-5209;

15. Oversee the development and implementation of mandatory uniform guidelines for utilization management; each locality receiving funds for activities under the Comprehensive Services Act shall have a locally determined utilization management plan following the guidelines or use of a process approved by the Council for utilization management, covering all CSA-funded services;

16. Oversee the development, implementation, and collection of uniform data collection standards, and the development of outcome measures; including, but not limited to, expenditures, number of youth served in specific CSA activities, length of stay for residents in core licensed residential facilities, and proportion of youth placed in treatment settings suggested by a uniform assessment instrument for CSA-funded services;

17. Establish and oversee the operation of an informal review and negotiation process with the Director of the Office of Comprehensive Services and a formal dispute resolution procedure before the State Executive Council, which include formal notice and an appeals process, should the Director or Council find, upon a formal written finding, that a CPMT failed to comply with any provision of this Act. "Formal notice" means the Director or Council provides a letter of notification, which communicates the Director's or the Council's finding, explains the effect of the finding, and describes the appeal process, to the chief administrative officer of the local government with a copy to the chair of the CPMT. The dispute resolution procedure shall also include provisions for remediation by the CPMT that shall include a plan of correction recommended by the Council and submitted to the CPMT. If the Council denies reimbursement from the state pool of funds, the Council and the locality shall develop a plan of repayment;

18. Deny state funding to a locality where the CPMT fails to provide services that comply with the Comprehensive Services Act (§ 2.2-5200 et seq.), in accordance with subdivision 17; and

19. Biennially publish and disseminate to members of the General Assembly and community policy and management teams a state progress report on comprehensive services to children, youth and families and a plan for such services for the next succeeding biennium. The state plan shall:

a. Provide a fiscal profile of current and previous years' federal and state expenditures for a comprehensive service system for children, youth and families;

b. Incorporate information and recommendations from local comprehensive service systems with responsibility for planning and delivering services to children, youth and families;

c. Identify and establish goals for comprehensive services and the estimated costs of implementing these goals, report progress toward previously identified goals and establish priorities for the coming biennium; and

d. Include such other information or recommendations as may be necessary and appropriate for the

674 improvement and coordinated development of the state's comprehensive services system.

675 § 2.2-2649. Office of Comprehensive Services for At-Risk Youth and Families established; powers  
676 and duties.

677 A. The Office of Comprehensive Services for At-Risk Youth and Families is hereby established to  
678 serve as the administrative entity of the Council and to ensure that the decisions of the council are  
679 implemented. The director shall be hired by and subject to the direction and supervision of the Council  
680 pursuant to § 2.2-2648.

681 B. The director of the Office of Comprehensive Services for At-Risk Youth and Families shall:

682 1. Develop and recommend to the state executive council programs and fiscal policies that promote  
683 and support cooperation and collaboration in the provision of services to troubled and at-risk youths and  
684 their families at the state and local levels;

685 2. Develop and recommend to the Council state interagency policies governing the use, distribution  
686 and monitoring of moneys in the state pool of funds and the state trust fund;

687 3. Develop and provide for the consistent oversight for program administration and compliance with  
688 state policies and procedures;

689 4. Provide for training and technical assistance to localities in the provision of efficient and effective  
690 services that are responsive to the strengths and needs of troubled and at-risk youths and their families;

691 5. Serve as liaison to the participating state agencies that administratively support the Office and that  
692 provide other necessary services;

693 6. Provide an informal review and negotiation process pursuant to subdivision D 17 of § 2.2-2648;

694 7. Implement, in collaboration with participating state agencies, policies, guidelines and procedures  
695 adopted by the State Executive Council;

696 8. Consult regularly with the Virginia Municipal League and the Virginia Association of Counties  
697 about implementation and operation of the Comprehensive Services Act (§ 2.2-5200 et seq.);

698 9. Hire appropriate staff as approved by the Council; and

699 10. Perform such other duties as may be assigned by the State Executive Council.

700 C. The director of the Office of Comprehensive Services, in order to provide support and assistance  
701 to the Comprehensive Policy and Management Teams (CPMTs) and Family Assessment and Planning  
702 Teams (FAPTs) established pursuant to the Comprehensive Services Act for At-Risk Youth and Families  
703 (§ 2.2-5200 et seq.), shall:

704 1. Develop and maintain a web-based statewide automated database, with support from the  
705 Department of Information Technology or its successor agency, of the authorized vendors of the  
706 Comprehensive Services Act (CSA) services to include verification of a vendor's licensure status, a  
707 listing of each discrete CSA service offered by the vendor, and the discrete CSA service's rate  
708 determined in accordance with § 2.2-5214; and

709 2. Develop, in consultation with the Department of General Services, CPMTs, and vendors, a  
710 standardized purchase of services contract, which in addition to general contract provisions when  
711 utilizing state pool funds will enable localities to specify the discrete service or services they are  
712 purchasing for the specified client, the required reporting of the client's service data, including types and  
713 numbers of disabilities, mental health and ~~mental retardation~~ *intellectual disability* diagnoses, or  
714 delinquent behaviors for which the purchased services are intended to address, the expected outcomes  
715 resulting from these services and the performance timeframes mutually agreed to when the services are  
716 purchased.

717 § 2.2-2664. Virginia Interagency Coordinating Council; purpose; membership; duties.

718 A. The Virginia Interagency Coordinating Council (the Council) is established as an advisory council,  
719 within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the  
720 Council shall be to promote and coordinate early intervention services in the Commonwealth.

721 B. The membership and operation of the Council shall be as required by Part C of the Individuals  
722 with Disabilities Education Act (20 U.S.C. § 1431 et seq.). The Commissioner of the Department of  
723 Health, the Director of the Department for the Deaf and Hard-of-Hearing, the Superintendent of Public  
724 Instruction, the Director of the Department of Medical Assistance Services, the Commissioner of the  
725 Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services,  
726 the Commissioner of the Department of Social Services, the Commissioner of the Department for the  
727 Blind and Vision Impaired, the Director of the Virginia Office for Protection and Advocacy, and the  
728 Commissioner of the Bureau of Insurance within the State Corporation Commission shall each appoint  
729 one person from his agency to serve as the agency's representative on the Council.

730 Agency representatives shall regularly inform their agency head of the Council's activities and the  
731 status of the implementation of an early intervention services system in the Commonwealth.

732 C. The Council's duties shall include advising and assisting the state lead agency in the following:

733 1. Performing its responsibilities for the early intervention services system;

734 2. Identifying sources of fiscal and other support for early intervention services, recommending  
735 financial responsibility arrangements among agencies, and promoting interagency agreements;

3. Developing strategies to encourage full participation, coordination, and cooperation of all appropriate agencies;

4. Resolving interagency disputes;

5. Gathering information about problems that impede timely and effective service delivery and taking steps to ensure that any identified policy problems are resolved;

6. Preparing federal grant applications; and

7. Preparing and submitting an annual report to the Governor and the U.S. Secretary of Education on the status of early intervention services within the Commonwealth.

§ 2.2-2696. Substance Abuse Services Council.

A. The Substance Abuse Services Council (the Council) is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Council is to advise and make recommendations to the Governor, the General Assembly, and the State Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services Board on broad policies and goals and on the coordination of the Commonwealth's public and private efforts to control substance abuse, as defined in § 37.2-100.

B. The Council shall consist of 30 members. Four members of the House of Delegates shall be appointed by the Speaker of the House of Delegates, in accordance with the principles of proportional representation contained in the Rules of the House of Delegates, and two members of the Senate shall be appointed by the Senate Committee on Rules. The Governor shall appoint one member representing the Virginia Sheriffs' Association, one member representing the Virginia Drug Courts Association, one member representing the Substance Abuse Certification Alliance of Virginia, two members representing the Virginia Association of Community Services Boards, and two members representing statewide consumer and advocacy organizations. The Council shall also include the Commissioner of the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services; the Commissioner of Health; the Commissioner of the Department of Motor Vehicles; the Superintendent of Public Instruction; the Directors of the Departments of Juvenile Justice, Corrections, Criminal Justice Services, Medical Assistance Services, and Social Services; the Chief Operating Officer of the Department of Alcoholic Beverage Control; the Executive Director of the Governor's Office for Substance Abuse Prevention or his designee; the Executive Director of the Virginia Tobacco Settlement Foundation or his designee; the Executive Director of the Commission on the Virginia Alcohol Safety Action Program or his designee; and the chairs or their designees of the Virginia Association of Drug and Alcohol Programs, the Virginia Association of Alcoholism and Drug Abuse Counselors, and the Substance Abuse Council and the Prevention Task Force of the Virginia Association of Community Services Boards.

C. Appointments of legislative members and heads of agencies or representatives of organizations shall be for terms consistent with their terms of office. All other appointments of nonlegislative members shall be for terms of three years, except an appointment to fill a vacancy, which shall be for the unexpired term. The Governor shall appoint a chairman from among the members.

No person shall be eligible to serve more than two successive terms, provided that a person appointed to fill a vacancy may serve two full successive terms.

D. The Council shall meet at least four times annually and more often if deemed necessary or advisable by the chairman.

E. Members of the Council shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the cost of expenses shall be provided by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services.

F. The duties of the Council shall be:

1. To recommend policies and goals to the Governor, the General Assembly, and the State Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services Board;

2. To coordinate agency programs and activities, to prevent duplication of functions, and to combine all agency plans into a comprehensive interagency state plan for substance abuse services;

3. To review and comment on annual state agency budget requests regarding substance abuse and on all applications for state or federal funds or services to be used in substance abuse programs;

4. To define responsibilities among state agencies for various programs for persons with substance abuse and to encourage cooperation among agencies; and

5. To make investigations, issue annual reports to the Governor and the General Assembly, and make recommendations relevant to substance abuse upon the request of the Governor.

G. Staff assistance shall be provided to the Council by the Office of Substance Abuse Services of the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services.

§ 2.2-2818. Health and related insurance for state employees.

A. The Department of Human Resource Management shall establish a plan, subject to the approval

of the Governor, for providing health insurance coverage, including chiropractic treatment, hospitalization, medical, surgical and major medical coverage, for state employees and retired state employees with the Commonwealth paying the cost thereof to the extent of the coverage included in such plan. The same plan shall be offered to all part-time state employees, but the total cost shall be paid by such part-time employees. The Department of Human Resource Management shall administer this section. The plan chosen shall provide means whereby coverage for the families or dependents of state employees may be purchased. Except for part-time employees, the Commonwealth may pay all or a portion of the cost thereof, and for such portion as the Commonwealth does not pay, the employee, including a part-time employee, may purchase the coverage by paying the additional cost over the cost of coverage for an employee.

Such contribution shall be financed through appropriations provided by law.

B. The plan shall:

1. Include coverage for low-dose screening mammograms for determining the presence of occult breast cancer. Such coverage shall make available one screening mammogram to persons age 35 through 39, one such mammogram biennially to persons age 40 through 49, and one such mammogram annually to persons age 50 and over and may be limited to a benefit of \$50 per mammogram subject to such dollar limits, deductibles, and coinsurance factors as are no less favorable than for physical illness generally.

The term "mammogram" shall mean an X-ray examination of the breast using equipment dedicated specifically for mammography, including but not limited to the X-ray tube, filter, compression device, screens, film, and cassettes, with an average radiation exposure of less than one rad mid-breast, two views of each breast.

In order to be considered a screening mammogram for which coverage shall be made available under this section:

a. The mammogram shall be (i) ordered by a health care practitioner acting within the scope of his licensure and, in the case of an enrollee of a health maintenance organization, by the health maintenance organization provider; (ii) performed by a registered technologist; (iii) interpreted by a qualified radiologist; and (iv) performed under the direction of a person licensed to practice medicine and surgery and certified by the American Board of Radiology or an equivalent examining body. A copy of the mammogram report shall be sent or delivered to the health care practitioner who ordered it;

b. The equipment used to perform the mammogram shall meet the standards set forth by the Virginia Department of Health in its radiation protection regulations; and

c. The mammography film shall be retained by the radiologic facility performing the examination in accordance with the American College of Radiology guidelines or state law.

2. Include coverage for the treatment of breast cancer by dose-intensive chemotherapy with autologous bone marrow transplants or stem cell support when performed at a clinical program authorized to provide such therapies as a part of clinical trials sponsored by the National Cancer Institute. For persons previously covered under the plan, there shall be no denial of coverage due to the existence of a preexisting condition.

3. Include coverage for postpartum services providing inpatient care and a home visit or visits that shall be in accordance with the medical criteria, outlined in the most current version of or an official update to the "Guidelines for Perinatal Care" prepared by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists or the "Standards for Obstetric-Gynecologic Services" prepared by the American College of Obstetricians and Gynecologists. Such coverage shall be provided incorporating any changes in such Guidelines or Standards within six months of the publication of such Guidelines or Standards or any official amendment thereto.

4. Include an appeals process for resolution of written complaints concerning denials or partial denials of claims that shall provide reasonable procedures for resolution of such written complaints and shall be published and disseminated to all covered state employees. The appeals process shall include a separate expedited emergency appeals procedure that shall provide resolution within one business day of receipt of a complaint concerning situations requiring immediate medical care. For appeals involving adverse decisions as defined in § 32.1-137.7, the Department shall contract with one or more impartial health entities to review such decisions. Impartial health entities may include medical peer review organizations and independent utilization review companies. The Department shall adopt regulations to assure that the impartial health entity conducting the reviews has adequate standards, credentials and experience for such review. The impartial health entity shall examine the final denial of claims to determine whether the decision is objective, clinically valid, and compatible with established principles of health care. The decision of the impartial health entity shall (i) be in writing, (ii) contain findings of fact as to the material issues in the case and the basis for those findings, and (iii) be final and binding if consistent with law and policy.

Prior to assigning an appeal to an impartial health entity, the Department shall verify that the impartial health entity conducting the review of a denial of claims has no relationship or association

with (i) the covered employee; (ii) the treating health care provider, or any of its employees or affiliates; (iii) the medical care facility at which the covered service would be provided, or any of its employees or affiliates; or (iv) the development or manufacture of the drug, device, procedure or other therapy that is the subject of the final denial of a claim. The impartial health entity shall not be a subsidiary of, nor owned or controlled by, a health plan, a trade association of health plans, or a professional association of health care providers. There shall be no liability on the part of and no cause of action shall arise against any officer or employee of an impartial health entity for any actions taken or not taken or statements made by such officer or employee in good faith in the performance of his powers and duties.

5. Include coverage for early intervention services. For purposes of this section, "early intervention services" means medically necessary speech and language therapy, occupational therapy, physical therapy and assistive technology services and devices for dependents from birth to age three who are certified by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services as eligible for services under Part H of the Individuals with Disabilities Education Act (20 U.S.C. § 1471 et seq.). Medically necessary early intervention services for the population certified by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services shall mean those services designed to help an individual attain or retain the capability to function age-appropriately within his environment, and shall include services that enhance functional ability without effecting a cure.

For persons previously covered under the plan, there shall be no denial of coverage due to the existence of a preexisting condition. The cost of early intervention services shall not be applied to any contractual provision limiting the total amount of coverage paid by the insurer to or on behalf of the insured during the insured's lifetime.

6. Include coverage for prescription drugs and devices approved by the United States Food and Drug Administration for use as contraceptives.

7. Not deny coverage for any drug approved by the United States Food and Drug Administration for use in the treatment of cancer on the basis that the drug has not been approved by the United States Food and Drug Administration for the treatment of the specific type of cancer for which the drug has been prescribed, if the drug has been recognized as safe and effective for treatment of that specific type of cancer in one of the standard reference compendia.

8. Not deny coverage for any drug prescribed to treat a covered indication so long as the drug has been approved by the United States Food and Drug Administration for at least one indication and the drug is recognized for treatment of the covered indication in one of the standard reference compendia or in substantially accepted peer-reviewed medical literature.

9. Include coverage for equipment, supplies and outpatient self-management training and education, including medical nutrition therapy, for the treatment of insulin-dependent diabetes, insulin-using diabetes, gestational diabetes and noninsulin-using diabetes if prescribed by a healthcare professional legally authorized to prescribe such items under law. To qualify for coverage under this subdivision, diabetes outpatient self-management training and education shall be provided by a certified, registered or licensed health care professional.

10. Include coverage for reconstructive breast surgery. For purposes of this section, "reconstructive breast surgery" means surgery performed on and after July 1, 1998, (i) coincident with a mastectomy performed for breast cancer or (ii) following a mastectomy performed for breast cancer to reestablish symmetry between the two breasts. For persons previously covered under the plan, there shall be no denial of coverage due to preexisting conditions.

11. Include coverage for annual pap smears, including coverage, on and after July 1, 1999, for annual testing performed by any FDA-approved gynecologic cytology screening technologies.

12. Include coverage providing a minimum stay in the hospital of not less than 48 hours for a patient following a radical or modified radical mastectomy and 24 hours of inpatient care following a total mastectomy or a partial mastectomy with lymph node dissection for treatment of breast cancer. Nothing in this subdivision shall be construed as requiring the provision of inpatient coverage where the attending physician in consultation with the patient determines that a shorter period of hospital stay is appropriate.

13. Include coverage (i) to persons age 50 and over and (ii) to persons age 40 and over who are at high risk for prostate cancer, according to the most recent published guidelines of the American Cancer Society, for one PSA test in a 12-month period and digital rectal examinations, all in accordance with American Cancer Society guidelines. For the purpose of this subdivision, "PSA testing" means the analysis of a blood sample to determine the level of prostate specific antigen.

14. Permit any individual covered under the plan direct access to the health care services of a participating specialist (i) authorized to provide services under the plan and (ii) selected by the covered individual. The plan shall have a procedure by which an individual who has an ongoing special condition may, after consultation with the primary care physician, receive a referral to a specialist for

920 such condition who shall be responsible for and capable of providing and coordinating the individual's  
921 primary and specialty care related to the initial specialty care referral. If such an individual's care would  
922 most appropriately be coordinated by such a specialist, the plan shall refer the individual to a specialist.  
923 For the purposes of this subdivision, "special condition" means a condition or disease that is (i)  
924 life-threatening, degenerative, or disabling and (ii) requires specialized medical care over a prolonged  
925 period of time. Within the treatment period authorized by the referral, such specialist shall be permitted  
926 to treat the individual without a further referral from the individual's primary care provider and may  
927 authorize such referrals, procedures, tests, and other medical services related to the initial referral as the  
928 individual's primary care provider would otherwise be permitted to provide or authorize. The plan shall  
929 have a procedure by which an individual who has an ongoing special condition that requires ongoing  
930 care from a specialist may receive a standing referral to such specialist for the treatment of the special  
931 condition. If the primary care provider, in consultation with the plan and the specialist, if any,  
932 determines that such a standing referral is appropriate, the plan or issuer shall make such a referral to a  
933 specialist. Nothing contained herein shall prohibit the plan from requiring a participating specialist to  
934 provide written notification to the covered individual's primary care physician of any visit to such  
935 specialist. Such notification may include a description of the health care services rendered at the time of  
936 the visit.

937 15. Include provisions allowing employees to continue receiving health care services for a period of  
938 up to 90 days from the date of the primary care physician's notice of termination from any of the plan's  
939 provider panels. The plan shall notify any provider at least 90 days prior to the date of termination of  
940 the provider, except when the provider is terminated for cause.

941 For a period of at least 90 days from the date of the notice of a provider's termination from any of  
942 the plan's provider panels, except when a provider is terminated for cause, a provider shall be permitted  
943 by the plan to render health care services to any of the covered employees who (i) were in an active  
944 course of treatment from the provider prior to the notice of termination and (ii) request to continue  
945 receiving health care services from the provider.

946 Notwithstanding the provisions of this subdivision, any provider shall be permitted by the plan to  
947 continue rendering health services to any covered employee who has entered the second trimester of  
948 pregnancy at the time of the provider's termination of participation, except when a provider is terminated  
949 for cause. Such treatment shall, at the covered employee's option, continue through the provision of  
950 postpartum care directly related to the delivery.

951 Notwithstanding the provisions of this subdivision, any provider shall be permitted to continue  
952 rendering health services to any covered employee who is determined to be terminally ill (as defined  
953 under § 1861 (dd) (3) (A) of the Social Security Act) at the time of a provider's termination of  
954 participation, except when a provider is terminated for cause. Such treatment shall, at the covered  
955 employee's option, continue for the remainder of the employee's life for care directly related to the  
956 treatment of the terminal illness.

957 A provider who continues to render health care services pursuant to this subdivision shall be  
958 reimbursed in accordance with the carrier's agreement with such provider existing immediately before  
959 the provider's termination of participation.

960 16. Include coverage for patient costs incurred during participation in clinical trials for treatment  
961 studies on cancer, including ovarian cancer trials.

962 The reimbursement for patient costs incurred during participation in clinical trials for treatment  
963 studies on cancer shall be determined in the same manner as reimbursement is determined for other  
964 medical and surgical procedures. Such coverage shall have durational limits, dollar limits, deductibles,  
965 copayments and coinsurance factors that are no less favorable than for physical illness generally.

966 For purposes of this subdivision:

967 "Cooperative group" means a formal network of facilities that collaborate on research projects and  
968 have an established NIH-approved peer review program operating within the group. "Cooperative group"  
969 includes (i) the National Cancer Institute Clinical Cooperative Group and (ii) the National Cancer  
970 Institute Community Clinical Oncology Program.

971 "FDA" means the Federal Food and Drug Administration.

972 "Multiple project assurance contract" means a contract between an institution and the federal  
973 Department of Health and Human Services that defines the relationship of the institution to the federal  
974 Department of Health and Human Services and sets out the responsibilities of the institution and the  
975 procedures that will be used by the institution to protect human subjects.

976 "NCI" means the National Cancer Institute.

977 "NIH" means the National Institutes of Health.

978 "Patient" means a person covered under the plan established pursuant to this section.

979 "Patient cost" means the cost of a medically necessary health care service that is incurred as a result  
980 of the treatment being provided to a patient for purposes of a clinical trial. "Patient cost" does not  
981 include (i) the cost of nonhealth care services that a patient may be required to receive as a result of the



treatment being provided for purposes of a clinical trial, (ii) costs associated with managing the research associated with the clinical trial, or (iii) the cost of the investigational drug or device.

Coverage for patient costs incurred during clinical trials for treatment studies on cancer shall be provided if the treatment is being conducted in a Phase II, Phase III, or Phase IV clinical trial. Such treatment may, however, be provided on a case-by-case basis if the treatment is being provided in a Phase I clinical trial.

The treatment described in the previous paragraph shall be provided by a clinical trial approved by:

- a. The National Cancer Institute;
- b. An NCI cooperative group or an NCI center;
- c. The FDA in the form of an investigational new drug application;
- d. The federal Department of Veterans Affairs; or
- e. An institutional review board of an institution in the Commonwealth that has a multiple project assurance contract approved by the Office of Protection from Research Risks of the NCI.

The facility and personnel providing the treatment shall be capable of doing so by virtue of their experience, training, and expertise.

Coverage under this subdivision shall apply only if:

- (1) There is no clearly superior, noninvestigational treatment alternative;
- (2) The available clinical or preclinical data provide a reasonable expectation that the treatment will be at least as effective as the noninvestigational alternative; and
- (3) The patient and the physician or health care provider who provides services to the patient under the plan conclude that the patient's participation in the clinical trial would be appropriate, pursuant to procedures established by the plan.

17. Include coverage providing a minimum stay in the hospital of not less than 23 hours for a covered employee following a laparoscopy-assisted vaginal hysterectomy and 48 hours for a covered employee following a vaginal hysterectomy, as outlined in Milliman & Robertson's nationally recognized guidelines. Nothing in this subdivision shall be construed as requiring the provision of the total hours referenced when the attending physician, in consultation with the covered employee, determines that a shorter hospital stay is appropriate.

18. Include coverage for biologically based mental illness.

For purposes of this subdivision, a "biologically based mental illness" is any mental or nervous condition caused by a biological disorder of the brain that results in a clinically significant syndrome that substantially limits the person's functioning; specifically, the following diagnoses are defined as biologically based mental illness as they apply to adults and children: schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder, attention deficit hyperactivity disorder, autism, and drug and alcoholism addiction.

Coverage for biologically based mental illnesses shall neither be different nor separate from coverage for any other illness, condition or disorder for purposes of determining deductibles, benefit year or lifetime durational limits, benefit year or lifetime dollar limits, lifetime episodes or treatment limits, copayment and coinsurance factors, and benefit year maximum for deductibles and copayment and coinsurance factors.

Nothing shall preclude the undertaking of usual and customary procedures to determine the appropriateness of, and medical necessity for, treatment of biologically based mental illnesses under this option, provided that all such appropriateness and medical necessity determinations are made in the same manner as those determinations made for the treatment of any other illness, condition or disorder covered by such policy or contract.

In no case, however, shall coverage for mental disorders provided pursuant to this section be diminished or reduced below the coverage in effect for such disorders on January 1, 1999.

19. Offer and make available coverage for the treatment of morbid obesity through gastric bypass surgery or such other methods as may be recognized by the National Institutes of Health as effective for the long-term reversal of morbid obesity. Such coverage shall have durational limits, dollar limits, deductibles, copayments and coinsurance factors that are no less favorable than for physical illness generally. Access to surgery for morbid obesity shall not be restricted based upon dietary or any other criteria not approved by the National Institutes of Health. For purposes of this subdivision, "morbid obesity" means (i) a weight that is at least 100 pounds over or twice the ideal weight for frame, age, height, and gender as specified in the 1983 Metropolitan Life Insurance tables, (ii) a body mass index (BMI) equal to or greater than 35 kilograms per meter squared with comorbidity or coexisting medical conditions such as hypertension, cardiopulmonary conditions, sleep apnea, or diabetes, or (iii) a BMI of 40 kilograms per meter squared without such comorbidity. As used herein, "BMI" equals weight in kilograms divided by height in meters squared.

20. Include coverage for colorectal cancer screening, specifically screening with an annual fecal occult blood test, flexible sigmoidoscopy or colonoscopy, or in appropriate circumstances radiologic

1043 imaging, in accordance with the most recently published recommendations established by the American  
1044 College of Gastroenterology, in consultation with the American Cancer Society, for the ages, family  
1045 histories, and frequencies referenced in such recommendations. The coverage for colorectal cancer  
1046 screening shall not be more restrictive than or separate from coverage provided for any other illness,  
1047 condition or disorder for purposes of determining deductibles, benefit year or lifetime durational limits,  
1048 benefit year or lifetime dollar limits, lifetime episodes or treatment limits, copayment and coinsurance  
1049 factors, and benefit year maximum for deductibles and copayments and coinsurance factors.

1050 21. On and after July 1, 2002, require that a prescription benefit card, health insurance benefit card,  
1051 or other technology that complies with the requirements set forth in § 38.2-3407.4:2 be issued to each  
1052 employee provided coverage pursuant to this section, and shall upon any changes in the required data  
1053 elements set forth in subsection A of § 38.2-3407.4:2, either reissue the card or provide employees  
1054 covered under the plan such corrective information as may be required to electronically process a  
1055 prescription claim.

1056 22. Include coverage for infant hearing screenings and all necessary audiological examinations  
1057 provided pursuant to § 32.1-64.1 using any technology approved by the United States Food and Drug  
1058 Administration, and as recommended by the national Joint Committee on Infant Hearing in its most  
1059 current position statement addressing early hearing detection and intervention programs. Such coverage  
1060 shall include follow-up audiological examinations as recommended by a physician, physician assistant,  
1061 nurse practitioner or audiologist and performed by a licensed audiologist to confirm the existence or  
1062 absence of hearing loss.

1063 C. Claims incurred during a fiscal year but not reported during that fiscal year shall be paid from  
1064 such funds as shall be appropriated by law. Appropriations, premiums and other payments shall be  
1065 deposited in the employee health insurance fund, from which payments for claims, premiums, cost  
1066 containment programs and administrative expenses shall be withdrawn from time to time. The funds of  
1067 the health insurance fund shall be deemed separate and independent trust funds, shall be segregated from  
1068 all other funds of the Commonwealth, and shall be invested and administered solely in the interests of  
1069 the employees and their beneficiaries. Neither the General Assembly nor any public officer, employee,  
1070 or agency shall use or authorize the use of such trust funds for any purpose other than as provided in  
1071 law for benefits, refunds, and administrative expenses, including but not limited to legislative oversight  
1072 of the health insurance fund.

1073 D. For the purposes of this section:

1074 "Peer-reviewed medical literature" means a scientific study published only after having been critically  
1075 reviewed for scientific accuracy, validity, and reliability by unbiased independent experts in a journal  
1076 that has been determined by the International Committee of Medical Journal Editors to have met the  
1077 Uniform Requirements for Manuscripts submitted to biomedical journals. Peer-reviewed medical  
1078 literature does not include publications or supplements to publications that are sponsored to a significant  
1079 extent by a pharmaceutical manufacturing company or health carrier.

1080 "Standard reference compendia" means the American Medical Association Drug Evaluations, the  
1081 American Hospital Formulary Service Drug Information, or the United States Pharmacopoeia Dispensing  
1082 Information.

1083 "State employee" means state employee as defined in § 51.1-124.3; employee as defined in  
1084 § 51.1-201; the Governor, Lieutenant Governor and Attorney General; judge as defined in § 51.1-301  
1085 and judges, clerks and deputy clerks of regional juvenile and domestic relations, county juvenile and  
1086 domestic relations, and district courts of the Commonwealth; and interns and residents employed by the  
1087 School of Medicine and Hospital of the University of Virginia, and interns, residents, and employees of  
1088 the Virginia Commonwealth University Health System Authority as provided in § 23-50.16:24.

1089 "Part-time state employees" means classified or similarly situated employees in legislative, executive,  
1090 judicial or independent agencies who are compensated on a salaried basis and work at least 20 hours,  
1091 but less than 32 hours, per week.

1092 E. Provisions shall be made for retired employees to obtain coverage under the above plan,  
1093 including, as an option, coverage for vision and dental care. The Commonwealth may, but shall not be  
1094 obligated to, pay all or any portion of the cost thereof.

1095 F. Any self-insured group health insurance plan established by the Department of Human Resource  
1096 Management that utilizes a network of preferred providers shall not exclude any physician solely on the  
1097 basis of a reprimand or censure from the Board of Medicine, so long as the physician otherwise meets  
1098 the plan criteria established by the Department.

1099 G. The plan shall include, in each planning district, at least two health coverage options, each  
1100 sponsored by unrelated entities. No later than July 1, 2006, one of the health coverage options to be  
1101 available in each planning district shall be a high deductible health plan that would qualify for a health  
1102 savings account pursuant to § 223 of the Internal Revenue Code of 1986, as amended.

1103 In each planning district that does not have an available health coverage alternative, the Department  
1104 shall voluntarily enter into negotiations at any time with any health coverage provider who seeks to

provide coverage under the plan.

This subsection shall not apply to any state agency authorized by the Department to establish and administer its own health insurance coverage plan separate from the plan established by the Department.

H. Any self-insured group health insurance plan established by the Department of Human Resource Management that includes coverage for prescription drugs on an outpatient basis may apply a formulary to the prescription drug benefits provided by the plan if the formulary is developed, reviewed at least annually, and updated as necessary in consultation with and with the approval of a pharmacy and therapeutics committee, a majority of whose members are actively practicing licensed (i) pharmacists, (ii) physicians, and (iii) other health care providers.

If the plan maintains one or more drug formularies, the plan shall establish a process to allow a person to obtain, without additional cost-sharing beyond that provided for formulary prescription drugs in the plan, a specific, medically necessary nonformulary prescription drug if, after reasonable investigation and consultation with the prescriber, the formulary drug is determined to be an inappropriate therapy for the medical condition of the person. The plan shall act on such requests within one business day of receipt of the request.

I. Any plan established in accordance with this section requiring preauthorization prior to rendering medical treatment shall have personnel available to provide authorization at all times when such preauthorization is required.

J. Any plan established in accordance with this section shall provide to all covered employees written notice of any benefit reductions during the contract period at least 30 days before such reductions become effective.

K. No contract between a provider and any plan established in accordance with this section shall include provisions that require a health care provider or health care provider group to deny covered services that such provider or group knows to be medically necessary and appropriate that are provided with respect to a covered employee with similar medical conditions.

L. The Department of Human Resource Management shall appoint an Ombudsman to promote and protect the interests of covered employees under any state employee's health plan.

The Ombudsman shall:

1. Assist covered employees in understanding their rights and the processes available to them according to their state health plan.

2. Answer inquiries from covered employees by telephone and electronic mail.

3. Provide to covered employees information concerning the state health plans.

4. Develop information on the types of health plans available, including benefits and complaint procedures and appeals.

5. Make available, either separately or through an existing Internet web site utilized by the Department of Human Resource Management, information as set forth in subdivision 4 and such additional information as he deems appropriate.

6. Maintain data on inquiries received, the types of assistance requested, any actions taken and the disposition of each such matter.

7. Upon request, assist covered employees in using the procedures and processes available to them from their health plan, including all appeal procedures. Such assistance may require the review of health care records of a covered employee, which shall be done only with that employee's express written consent. The confidentiality of any such medical records shall be maintained in accordance with the confidentiality and disclosure laws of the Commonwealth.

8. Ensure that covered employees have access to the services provided by the Ombudsman and that the covered employees receive timely responses from the Ombudsman or his representatives to the inquiries.

9. Report annually on his activities to the standing committees of the General Assembly having jurisdiction over insurance and over health and the Joint Commission on Health Care by December 1 of each year.

M. The plan established in accordance with this section shall not refuse to accept or make reimbursement pursuant to an assignment of benefits made to a dentist or oral surgeon by a covered employee.

For purposes of this subsection, "assignment of benefits" means the transfer of dental care coverage reimbursement benefits or other rights under the plan. The assignment of benefits shall not be effective until the covered employee notifies the plan in writing of the assignment.

N. Beginning July 1, 2006, any plan established pursuant to this section shall provide for an identification number, which shall be assigned to the covered employee and shall not be the same as the employee's social security number.

O. Any group health insurance plan established by the Department of Human Resource Management that contains a coordination of benefits provision shall provide written notification to any eligible

employee as a prominent part of its enrollment materials that if such eligible employee is covered under another group accident and sickness insurance policy, group accident and sickness subscription contract, or group health care plan for health care services, that insurance policy, subscription contract or health care plan may have primary responsibility for the covered expenses of other family members enrolled with the eligible employee. Such written notification shall describe generally the conditions upon which the other coverage would be primary for dependent children enrolled under the eligible employee's coverage and the method by which the eligible enrollee may verify from the plan that coverage would have primary responsibility for the covered expenses of each family member.

P. Any plan established by the Department of Human Resource Management pursuant to this section shall provide that coverage under such plan for family members enrolled under a participating state employee's coverage shall continue for a period of at least 30 days following the death of such state employee.

Q. The plan established in accordance with this section that follows a policy of sending its payment to the covered employee or covered family member for a claim for services received from a nonparticipating physician or osteopath shall (i) include language in the member handbook that notifies the covered employee of the responsibility to apply the plan payment to the claim from such nonparticipating provider, (ii) include this language with any such payment sent to the covered employee or covered family member, and (iii) include the name and any last known address of the nonparticipating provider on the explanation of benefits statement.

§ 2.2-2905. Certain officers and employees exempt from chapter.

The provisions of this chapter shall not apply to:

1. Officers and employees for whom the Constitution specifically directs the manner of selection;
2. Officers and employees of the Supreme Court and the Court of Appeals;
3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not;
4. Officers elected by popular vote or by the General Assembly or either house thereof;
5. Members of boards and commissions however selected;
6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;
7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;
8. The presidents, and teaching and research staffs of state educational institutions;
9. Commissioned officers and enlisted personnel of the National Guard and the naval militia;
10. Student employees in institutions of learning, and patient or inmate help in other state institutions;
11. Upon general or special authorization of the Governor, laborers, temporary employees and employees compensated on an hourly or daily basis;
12. County, city, town and district officers, deputies, assistants and employees;
13. The employees of the Virginia Workers' Compensation Commission;
14. The officers and employees of the Virginia Retirement System;
15. Employees whose positions are identified by the State Council of Higher Education and the boards of the Virginia Museum of Fine Arts, The Science Museum of Virginia, the Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of Natural History and The Library of Virginia, and approved by the Director of the Department of Human Resource Management as requiring specialized and professional training;
16. Employees of the State Lottery Department;
17. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs;
18. Employees of the Virginia Commonwealth University Health System Authority;
19. Employees of the University of Virginia Medical Center. Any changes in compensation plans for such employees shall be subject to the review and approval of the Board of Visitors of the University of Virginia. The University of Virginia shall ensure that its procedures for hiring University of Virginia Medical Center personnel are based on merit and fitness. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);
20. In executive branch agencies the employee who has accepted serving in the capacity of chief deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential assistant for policy or administration. An employee serving in either one of these two positions shall be deemed to serve on an employment-at-will basis. An agency may not exceed two employees who serve in this exempt capacity;
21. Employees of Virginia Correctional Enterprises. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);
22. Officers and employees of the Virginia Port Authority;

23. Employees of the Virginia College Savings Plan;  
 24. Directors of state facilities operated by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services employed or reemployed by the Commissioner after July 1, 1999, under a contract pursuant to § 37.2-707. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);

25. The Director of the Virginia Office for Protection and Advocacy;

26. Employees of the Virginia Tobacco Settlement Foundation. Such employees shall be treated as state employees for purposes of participation in the Virginia Retirement System, health insurance, and all other employee benefits offered by the Commonwealth to its classified employees; and

27. Employees of the Virginia Indigent Defense Commission.

§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Confidential records of all investigations of applications for licenses and permits, and of all licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, the Department of Charitable Gaming, or the Private Security Services Unit of the Department of Criminal Justice Services.

2. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.

3. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management or to such personnel of any local public body, including local school boards as are responsible for conducting such investigations in confidence. However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.

4. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance with the authority specified in § 2.2-2638, or adopted pursuant to § 15.2-965, or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

6. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv) and (v) shall be open to inspection and copying upon completion of the study or investigation.

7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the (i) Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; (iii) Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; (iv) committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (v) auditors, appointed by the local governing body of any county, city or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department or program of such body. Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

8. Records of the Virginia Office for Protection and Advocacy consisting of documentary evidence received or maintained by the Office or its agents in connection with specific complaints or investigations, and records of communications between employees and agents of the Office and its

clients or prospective clients concerning specific complaints, investigations or cases. Upon the conclusion of an investigation of a complaint, this exclusion shall no longer apply, but the Office may not at any time release the identity of any complainant or person with mental illness, ~~mental retardation~~ *intellectual disabilities*, developmental disabilities or other disability, unless (i) such complainant or person or his legal representative consents in writing to such identification or (ii) such identification is required by court order.

9. Information furnished in confidence to the Department of Employment Dispute Resolution with respect to an investigation, consultation, or mediation under Chapter 10 (§ 2.2-1000 et seq.) of this title, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

10. The names, addresses and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints made to a local governing body.

11. Records of active investigations being conducted by the Department of Criminal Justice Services pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185 et seq.) and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

12. Records furnished to or prepared by the Board of Education pursuant to subsection D of § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. However, this section shall not prohibit the disclosure of records to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board.

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

Where the person who is the subject of health records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the health records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Health records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the health records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

Where the person who is the subject of health records is under the age of 18, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated, a court of competent jurisdiction has restricted or denied such access, or a parent has been denied access to the health record in accordance with § 20-124.6. In instances where the person who is the subject thereof is an emancipated minor, a student in a public institution of higher education, or is a minor who has consented to his own treatment as authorized by § 16.1-338 or 54.1-2969, the right of access may be asserted by the subject person.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services shall be open to inspection and copying as provided in § 2.2-3704. No such summaries or data shall include any patient-identifying information.

2. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

3. Reports, documentary evidence and other information as specified in §§ 2.2-706 and 63.2-104.

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2. However, nothing in this section shall prohibit disclosure of information from the records of completed

investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

5. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.2-818.

7. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or the expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

8. Information required to be provided to the Department of Health Professions by certain licensees pursuant to § 54.1-2506.1.

9. All information and records acquired during a review of any child death by the State Child Fatality Review team established pursuant to § 32.1-283.1, during a review of any child death by a local or regional child fatality review team established pursuant to § 32.1-283.2, and all information and records acquired during a review of any death by a family violence fatality review team established pursuant to § 32.1-283.3.

10. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § 32.1-276.4.

11. Records of the Intervention Program Committee within the Department of Health Professions, to the extent such records may identify any practitioner who may be, or who is actually, impaired to the extent disclosure is prohibited by § 54.1-2517.

12. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ 51.5-12.1 et seq.) of Title 51.5, to the extent such records contain (i) medical or mental records, or other data identifying individual patients or (ii) proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

13. Any record copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

14. Records, information and statistical registries required to be kept confidential pursuant to §§ 63.2-102 and 63.2-104.

15. All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of the Program.

16. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be kept confidential pursuant to § 38.2-5002.2.

17. Records of the State Health Commissioner relating to the health of any person or persons subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1; this provision shall not, however, be construed to prohibit the disclosure of statistical summaries, abstracts or other information in aggregate form.

18. Records containing the names and addresses or other contact information of persons receiving transportation services from a state or local public body or its designee under Title II of the Americans with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under § 63.2-600.

§ 2.2-4344. Exemptions from competition for certain transactions.

A. Any public body may enter into contracts without competition for:

1. The purchase of goods or services that are produced or performed by:

a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired; or

b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped.

2. The purchase of legal services, provided that the pertinent provisions of Chapter 5 (§ 2.2-500 et seq.) of this title remain applicable, or expert witnesses or other services associated with litigation or regulatory proceedings.

1412 B. An industrial development authority may enter into contracts without competition with respect to  
1413 any item of cost of "authority facilities" or "facilities" as defined in § 15.2-4902.

1414 C. A community development authority formed pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter  
1415 51 of Title 15.2, with members selected pursuant to such article, may enter into contracts without  
1416 competition with respect to the exercise of any of its powers permitted by § 15.2-5158. However, this  
1417 exception shall not apply in cases where any public funds other than special assessments and  
1418 incremental real property taxes levied pursuant to § 15.2-5158 are used as payment for such contract.

1419 D. The Inspector General for Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance  
1420 Abuse Services may enter into contracts without competition to obtain the services of licensed health  
1421 care professionals or other experts to assist in carrying out the duties of the Office of the Inspector  
1422 General for Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services.

1423 § 2.2-5201. State and local advisory team; appointment; membership.

1424 The state and local advisory team is established to better serve the needs of troubled and at-risk  
1425 youths and their families by advising the Council by managing cooperative efforts at the state level and  
1426 providing support to community efforts. The team shall be appointed by and be responsible to the  
1427 Council. The team shall include one representative from each of the following state agencies: the  
1428 Department of Health, Department of Juvenile Justice, Department of Social Services, Department of  
1429 Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, the Department  
1430 of Medical Assistance Services, and the Department of Education. The team shall also include a parent  
1431 representative who is not an employee of any public or private program which serves children and  
1432 families; a representative of a private organization or association of providers for children's or family  
1433 services; a local Comprehensive Services Act coordinator or program manager; a juvenile and domestic  
1434 relations district court judge; and one member from each of five different geographical areas of the  
1435 Commonwealth and who serves on and is representative of the different participants of community  
1436 policy and management teams. The nonstate agency members shall serve staggered terms of not more  
1437 than three years, such terms to be determined by the Council.

1438 The team shall annually elect a chairman from among the local government representatives who shall  
1439 be responsible for convening the team. The team shall develop and adopt bylaws to govern its  
1440 operations that shall be subject to approval by the Council. Any person serving on such team who does  
1441 not represent a public agency shall file a statement of economic interests as set out in § 2.2-3117 of the  
1442 State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.). Persons representing public  
1443 agencies shall file such statements if required to do so pursuant to the State and Local Government  
1444 Conflict of Interests Act.

1445 § 2.2-5206. Community policy and management teams; powers and duties.

1446 The community policy and management team shall manage the cooperative effort in each community  
1447 to better serve the needs of troubled and at-risk youths and their families and to maximize the use of  
1448 state and community resources. Every such team shall:

1449 1. Develop interagency policies and procedures to govern the provision of services to children and  
1450 families in its community;

1451 2. Develop interagency fiscal policies governing access to the state pool of funds by the eligible  
1452 populations including immediate access to funds for emergency services and shelter care;

1453 3. Establish policies to assess the ability of parents or legal guardians to contribute financially to the  
1454 cost of services to be provided and, when not specifically prohibited by federal or state law or  
1455 regulation, provide for appropriate parental or legal guardian financial contribution, utilizing a standard  
1456 sliding fee scale based upon ability to pay;

1457 4. Coordinate long-range, community-wide planning that ensures the development of resources and  
1458 services needed by children and families in its community including consultation on the development of  
1459 a community-based system of services established under § 16.1-309.3;

1460 5. Establish policies governing referrals and reviews of children and families to the family  
1461 assessment and planning teams or a collaborative, multidisciplinary team process approved by the  
1462 Council and a process to review the teams' recommendations and requests for funding;

1463 6. Establish quality assurance and accountability procedures for program utilization and funds  
1464 management;

1465 7. Establish procedures for obtaining bids on the development of new services;

1466 8. Manage funds in the interagency budget allocated to the community from the state pool of funds,  
1467 the trust fund, and any other source;

1468 9. Authorize and monitor the expenditure of funds by each family assessment and planning team or a  
1469 collaborative, multidisciplinary team process approved by the Council;

1470 10. Submit grant proposals that benefit its community to the state trust fund and enter into contracts  
1471 for the provision or operation of services upon approval of the participating governing bodies;

1472 11. Serve as its community's liaison to the Office of Comprehensive Services for At-Risk Youth and  
1473 Families, reporting on its programmatic and fiscal operations and on its recommendations for improving



the service system, including consideration of realignment of geographical boundaries for providing human services;

12. Collect and provide uniform data to the Council on, but not limited to, expenditures, number of youth served in specific CSA activities, length of stay for residents in core licensed residential facilities, and proportion of youth placed in treatment settings suggested by a uniform assessment instrument for CSA-funded services;

13. Administer funds pursuant to § 16.1-309.3;

14. Have authority, upon approval of the participating governing bodies, to enter into a contract with another community policy and management team to purchase coordination services provided that funds described as the state pool of funds under § 2.2-5211 are not used; and

15. Submit to the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services information on children under the age of 14 and adolescents ages 14 through 17 for whom an admission to an acute care psychiatric or residential treatment facility licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2, exclusive of group homes, was sought but was unable to be obtained by the reporting entities. Such information shall be gathered from the family assessment and planning team or participating community agencies authorized in § 2.2-5207. Information to be submitted shall include:

- a. The child or adolescent's date of birth;
- b. Date admission was attempted; and
- c. Reason the patient could not be admitted into the hospital or facility.

§ 2.2-5300. Definitions.

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

"Council" means the Virginia Interagency Coordinating Council created pursuant to § 2.2-2664.

"Early intervention services" means services provided through Part C of the Individuals with Disabilities Education Act (20 U.S.C. § 1431 et seq.), as amended, designed to meet the developmental needs of each child and the needs of the family related to enhancing the child's development and provided to children from birth to age three who have (i) a 25 percent developmental delay in one or more areas of development, (ii) atypical development, or (iii) a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay. Early intervention services provided in the child's home and in accordance with this chapter shall not be construed to be home health services as referenced in § 32.1-162.7.

"Participating agencies" means the Departments of Health, of Education, of Medical Assistance Services, of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, and of Social Services; the Departments for the Deaf and Hard-of-Hearing and for the Blind and Vision Impaired; the Virginia Office for Protection and Advocacy; and the Bureau of Insurance within the State Corporation Commission.

§ 4.1-305. Purchasing or possessing alcoholic beverages unlawful in certain cases; venue; exceptions; penalty; forfeiture; deferred proceedings; treatment and education programs and services.

A. No person to whom an alcoholic beverage may not lawfully be sold under § 4.1-304 shall consume, purchase or possess, or attempt to consume, purchase or possess, any alcoholic beverage, except (i) pursuant to subdivisions 1 through 7 of § 4.1-200; (ii) where possession of the alcoholic beverages by a person less than 21 years of age is due to such person's making a delivery of alcoholic beverages in pursuance of his employment or an order of his parent; or (iii) by any state, federal, or local law-enforcement officer when possession of an alcoholic beverage is necessary in the performance of his duties. Such person may be prosecuted either in the county or city in which the alcohol was possessed or consumed, or in the county or city in which the person exhibits evidence of physical indicia of consumption of alcohol.

B. No person under the age of 21 years shall use or attempt to use any (i) altered, fictitious, facsimile or simulated license to operate a motor vehicle, (ii) altered, fictitious, facsimile or simulated document, including, but not limited to a birth certificate or student identification card, or (iii) motor vehicle operator's license, birth certificate or student identification card of another person in order to establish a false identification or false age for himself to consume, purchase or attempt to consume or purchase an alcoholic beverage.

C. Any person found guilty of a violation of this section shall be guilty of a Class 1 misdemeanor; and upon conviction, (i) such person shall be ordered to pay a mandatory minimum fine of \$500 or ordered to perform a mandatory minimum of 50 hours of community service as a condition of probation supervision and (ii) the license to operate a motor vehicle in the Commonwealth of any such person age 18 or older shall be suspended for a period of not less than six months and not more than one year. The court, in its discretion and upon a demonstration of hardship, may authorize any person convicted of a violation of this section the use of a restricted permit to operate a motor vehicle in accordance with the provisions of subsection D of § 16.1-278.9 or subsection E of § 18.2-271.1 or when referred to a local

community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1. During the period of license suspension, the court may require a person issued a restricted permit under the provisions of this subsection to be (i) monitored by an alcohol safety action program, or (ii) supervised by a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, if one has been established for the locality. The alcohol safety action program or local community-based probation services agency shall report to the court any violation of the terms of the restricted permit, the required alcohol safety action program monitoring or local community-based probation services and any condition related thereto or any failure to remain alcohol-free during the suspension period.

D. Any alcoholic beverage purchased or possessed in violation of this section shall be deemed contraband and forfeited to the Commonwealth in accordance with § 4.1-338.

E. Any retail licensee who in good faith promptly notifies the Board or any state or local law-enforcement agency of a violation or suspected violation of this section shall be accorded immunity from an administrative penalty for a violation of § 4.1-304.

F. When any person who has not previously been convicted of underaged consumption, purchase or possession of alcoholic beverages in Virginia or any other state or the United States is before the court, the court may, upon entry of a plea of guilty or not guilty, if the facts found by the court would justify a finding of guilt of a violation of subsection A, without entering a judgment of guilt and with the consent of the accused, defer further proceedings and place him on probation subject to appropriate conditions. Such conditions may include the imposition of the license suspension and restricted license provisions in subsection C. However, in all such deferred proceedings, the court shall require the accused to enter a treatment or education program or both, if available, that in the opinion of the court best suits the needs of the accused. If the accused is placed on local community-based probation, the program or services shall be located in any of the judicial districts served by the local community-based probation services agency or in any judicial district ordered by the court when the placement is with an alcohol safety action program. The services shall be provided by (i) a program licensed by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, (ii) certified by the Commission on VASAP, or (iii) by a program or services made available through a community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, if one has been established for the locality. When an offender is ordered to a local community-based probation services rather than the alcohol safety action program, the local community-based probation services agency shall be responsible for providing for services or referring the offender to education or treatment services as a condition of probation.

Upon violation of a condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the conditions, the court shall discharge the person and dismiss the proceedings against him without an adjudication of guilt. A discharge and dismissal hereunder shall be treated as a conviction for the purpose of applying this section in any subsequent proceedings.

§ 8.01-654.2. Presentation of claim of intellectual disability by person sentenced to death before April 29, 2003.

Notwithstanding any other provision of law, any person under sentence of death whose sentence became final in the circuit court before April 29, 2003, and who desires to have a claim of his ~~mental retardation~~ *intellectual disability* presented to the Supreme Court, shall do so by one of the following methods: (i) if the person has not commenced a direct appeal, he shall present his claim of ~~mental retardation~~ *intellectual disability* by assignment of error and in his brief in that appeal, or if his direct appeal is pending in the Supreme Court, he shall file a supplemental assignment of error and brief containing his claim of ~~mental retardation~~ *intellectual disability*, or (ii) if the person has not filed a petition for a writ of habeas corpus under subsection C of § 8.01-654, he shall present his claim of ~~mental retardation~~ *intellectual disability* in a petition for a writ of habeas corpus under such subsection, or if such a petition is pending in the Supreme Court, he shall file an amended petition containing his claim of ~~mental retardation~~ *intellectual disability*. A person proceeding under this section shall allege the factual basis for his claim of ~~mental retardation~~ *intellectual disability*. The Supreme Court shall consider a claim raised under this section and if it determines that the claim is not frivolous, it shall remand the claim to the circuit court for a determination of ~~mental retardation~~ *intellectual disability*; otherwise the Supreme Court shall dismiss the petition. The provisions of §§ 19.2-264.3:1.1 and 19.2-264.3:1.2 shall govern a determination of ~~mental retardation~~ *intellectual disability* made pursuant to this section. If the claim is before the Supreme Court on direct appeal and is remanded to the circuit court and the case wherein the sentence of death was imposed was tried by a jury, the circuit court shall empanel a new jury for the sole purpose of making a determination of ~~mental retardation~~ *intellectual disability*.

If the person has completed both a direct appeal and a habeas corpus proceeding under subsection C of § 8.01-654, he shall not be entitled to file any further habeas petitions in the Supreme Court and his sole remedy shall lie in federal court.

§ 9.1-111. Advisory Committee on Juvenile Justice; membership; terms; quorum; compensation and

expenses; duties.

A. The Advisory Committee on Juvenile Justice (the Advisory Committee) is established as an advisory committee in the executive branch of state government. The Advisory Committee shall have the responsibility for advising and assisting the Board, the Department, all agencies, departments, boards and institutions of the Commonwealth, and units of local government, or combinations thereof, on matters related to the prevention and treatment of juvenile delinquency and the administration of juvenile justice in the Commonwealth.

The membership of the Advisory Committee shall comply with the membership requirements contained in the Juvenile Justice and Delinquency Prevention Act pursuant to 42 U.S.C. § 5633, as amended, and shall consist of: the Commissioner of the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services; the Commissioner of the Department of Social Services; the Director of the Department of Juvenile Justice; the Superintendent of Public Instruction; one member of the Senate Committee for Courts of Justice appointed by the Senate Committee on Rules after consideration of the recommendation of the Chairman of the Senate Committee for Courts of Justice; one member of the House Committee on Health, Welfare and Institutions appointed by the Speaker of the House of Delegates after consideration of the recommendation of the Chairman of the House Committee on Health, Welfare and Institutions; and such number of nonlegislative citizen members appointed by the Governor to comply with the membership range established by such federal act.

Legislative members, the Superintendent of Public Instruction, and the agency directors shall serve terms coincident with their terms of office. All other members shall be citizens of the Commonwealth and be appointed by the Governor for a term of four years. However, no member shall serve beyond the time when he holds the office or employment by reason of which he was initially eligible for appointment.

The Advisory Committee shall elect its chairman and vice-chairman from among its members.

B. Gubernatorial appointed members of the Advisory Committee shall not be eligible to serve for more than two consecutive full terms. Three or more years within a four-year period shall be deemed a full term. Any vacancy on the Advisory Committee shall be filled in the same manner as the original appointment, but for the unexpired term.

C. The majority of the members of the Advisory Committee shall constitute a quorum. The Advisory Committee shall hold no less than four regular meetings a year. Subject to the requirements of this subsection, the chairman shall fix the times and places of meetings, either on his own motion or upon written request of any five members of the Advisory Committee.

D. The Advisory Committee may adopt bylaws for its operation.

E. Members of the Advisory Committee shall not receive compensation, but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of the expenses shall be provided from federal funds received for such purposes by the Department of Criminal Justice Services.

F. The Advisory Committee shall have the following duties and responsibilities to:

1. Review the operation of the juvenile justice system in the Commonwealth, including facilities and programs, and prepare appropriate reports;

2. Review statewide plans, conduct studies, and make recommendations on needs and priorities for the development and improvement of the juvenile justice system in the Commonwealth; and

3. Advise on all matters related to the federal Juvenile Justice and Delinquency Prevention Act of 1974 (P. L. 93-415, as amended), and recommend such actions on behalf of the Commonwealth as may seem desirable to secure benefits of that or other federal programs for delinquency prevention of the administration of juvenile justice.

G. The Department of Criminal Justice Services shall provide staff support to the Advisory Committee. Upon request, each administrative entity or collegial body within the executive branch of the state government shall cooperate with the Advisory Committee as it carries out its responsibilities.

§ 9.1-901. Persons for whom registration required.

A. Every person convicted on or after July 1, 1994, including a juvenile tried and convicted in the circuit court pursuant to § 16.1-269.1, whether sentenced as an adult or juvenile, of an offense set forth in § 9.1-902 and every juvenile found delinquent of an offense for which registration is required under subsection G of § 9.1-902 shall register and reregister as required by this chapter. Every person serving a sentence of confinement on or after July 1, 1994, for a conviction of an offense set forth in § 9.1-902 shall register and reregister as required by this chapter. Every person under community supervision as defined by § 53.1-1 or any similar form of supervision under the laws of the United States or any political subdivision thereof, on or after July 1, 1994, resulting from a conviction of an offense set forth in § 9.1-902 shall register and reregister as required by this chapter.

B. Every person found not guilty by reason of insanity on or after July 1, 2007, of an offense set

1658 forth in § 9.1-902 shall register and reregister as required by this chapter. Every person in the custody of  
1659 the Commissioner of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse  
1660 Services, or on conditional release on or after July 1, 2007, because of a finding of not guilty by reason  
1661 of insanity of an offense set forth in § 9.1-902 shall register and reregister as required by this chapter.

1662 C. Unless a specific effective date is otherwise provided, all provisions of the Sex Offender and  
1663 Crimes Against Minors Registry Act shall apply retroactively. This subsection is declaratory of existing  
1664 law.

1665 § 15.2-964. Organization of local human services activities; authorization of reorganization by  
1666 Governor.

1667 A. Any city or county may prepare and submit to the Governor a plan to reorganize the  
1668 governmental structures or administrative procedures and systems of human resources agencies should  
1669 provisions of law or the rules, regulations and standards of any state agency prohibit or restrict the  
1670 implementation of such a reorganization. The plan shall set forth the proposed reorganization and the  
1671 provisions of law or the rules, regulations or standards that prohibit or restrict the implementation of  
1672 such proposed reorganization.

1673 B. The Governor shall prepare, and provide to those counties and cities which request them,  
1674 guidelines for the preparation and submission to him of reorganization plans by a city or county. The  
1675 Governor may consider only those reorganization plans adopted by resolution of the governing body of  
1676 the city or county applying for approval to reorganize its human services agencies.

1677 C. The several state boards and commissions which are empowered to promulgate rules, regulations  
1678 and guidelines affecting the organization or administration of local human service agencies are hereby  
1679 authorized to modify their respective rules, regulations and guidelines at the direction of the Governor in  
1680 furtherance of any reorganization plan approved by him.

1681 D. If a provision or provisions of law prohibit or restrict the implementation of all or part of such  
1682 reorganization plan the Governor shall transmit such plan or such parts of such plan affected by such  
1683 laws to each House of the General Assembly at least forty-five days prior to the commencement of a  
1684 regular or special session of the General Assembly. Such plan or portions of such plan so transmitted by  
1685 the Governor under this section shall not become effective unless it is introduced by bill and enacted  
1686 into law.

1687 E. The plan or such portions of the plan transmitted by the Governor to the General Assembly shall  
1688 set forth: (i) the provision or provisions of law that prohibit or restrict the implementation of such plan  
1689 or parts of such plan; (ii) the changes in governmental structure or administrative procedure system of  
1690 the human resources agencies affected; and (iii) the anticipated effects of such changes upon the  
1691 efficiency and effectiveness of the agencies affected.

1692 F. Any reorganization authorized under the provision of this section shall be implemented within  
1693 appropriations or other funds which may be made available to the city or county requesting such  
1694 reorganization approval.

1695 G. Nothing in this section shall be interpreted to permit a city or county to eliminate the provision of  
1696 any service required by law or to reduce the level of service below any level required by law.

1697 H. The localities shall be required to maintain financial and statistical records in accordance with the  
1698 guidelines issued by the Governor so as to allow responsible state agencies to review records and  
1699 determine costs for programs for which the agency is responsible.

1700 I. For the purposes of this section the term "human resource agencies" means agencies which deliver  
1701 social, employment, health, mental health and ~~mental retardation~~, *intellectual disability*, rehabilitation,  
1702 nursing, information and referral service, and such other related services.

1703 § 15.2-2291. Group homes of eight or fewer single-family residence.

1704 A. Zoning ordinances for all purposes shall consider a residential facility in which no more than  
1705 eight mentally ill, ~~mentally retarded~~ *intellectually disabled*, or developmentally disabled persons reside,  
1706 with one or more resident counselors or other staff persons, as residential occupancy by a single family.  
1707 For the purposes of this subsection, mental illness and developmental disability shall not include current  
1708 illegal use of or addiction to a controlled substance as defined in § 54.1-3401. No conditions more  
1709 restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption  
1710 shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group  
1711 home or other residential facility for which the Department of Mental Health, ~~Mental~~  
1712 ~~Retardation~~ *Intellectual Disability* and Substance Abuse Services is the licensing authority pursuant to  
1713 this Code.

1714 B. Zoning ordinances in the Counties of Arlington, Henry, and York for all purposes shall consider a  
1715 residential facility in which no more than eight aged, infirm or disabled persons reside, with one or  
1716 more resident counselors or other staff persons, as residential occupancy by a single family. No  
1717 conditions more restrictive than those imposed on residences occupied by persons related by blood,  
1718 marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential  
1719 facility" means any group home or residential facility in which aged, infirm or disabled persons reside

with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code.

C. Zoning ordinances in the Cities of Lynchburg and Suffolk for all purposes shall consider a residential facility in which no more than four aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code.

§ 15.2-5386. Limitations of the Authority.

A. No provision related to the establishment, powers, or authorities of the Southwest Virginia Health Facilities Authority, its subsidiaries, or successors, shall apply to the facilities, equipment, or appropriations of any state agency including, but not limited to, the Virginia Department of Health and the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability*, and Substances Abuse Services.

B. The Authority, its subsidiaries or successors, shall not be exempt from the Certificate of Public Need law and regulations or licensure standards of the Virginia Department of Health.

C. No provision of this chapter related to the establishment, power or authority of the Authority or participating localities shall apply to or affect any hospital as defined in § 32.1-123.

§ 16.1-241. Jurisdiction; consent for abortion.

The judges of the juvenile and domestic relations district court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county, over all cases, matters and proceedings involving:

A. The custody, visitation, support, control or disposition of a child:

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent except where the jurisdiction of the juvenile court has been terminated or divested;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

3. Whose custody, visitation or support is a subject of controversy or requires determination. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, except as provided in § 16.1-244;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817 or whose parent or parents for good cause desire to be relieved of his care and custody;

5. Where the termination of residual parental rights and responsibilities is sought. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in § 16.1-244; and

6. Who is charged with a traffic infraction as defined in § 46.2-100.

In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 14 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 14 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. A determination by the juvenile court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § 16.1-269.6.

1781 In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a  
1782 violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a  
1783 lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be  
1784 divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

1785 The authority of the juvenile court to adjudicate matters involving the custody, visitation, support,  
1786 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,  
1787 father or legal guardian but shall include petitions filed at any time by any party with a legitimate  
1788 interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not  
1789 be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party  
1790 with a legitimate interest shall not include any person (i) whose parental rights have been terminated by  
1791 court order, either voluntarily or involuntarily, (ii) whose interest in the child derives from or through a  
1792 person whose parental rights have been terminated by court order, either voluntarily or involuntarily,  
1793 including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family  
1794 members, if the child subsequently has been legally adopted, except where a final order of adoption is  
1795 entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of subsection A of  
1796 § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United  
1797 States, or any foreign jurisdiction, when the child who is the subject of the petition was conceived as a  
1798 result of such violation. The authority of the juvenile court to consider a petition involving the custody  
1799 of a child shall not be proscribed or limited where the child has previously been awarded to the custody  
1800 of a local board of social services.

1801 B. The admission of minors for inpatient treatment in a mental health facility in accordance with the  
1802 provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the involuntary admission of a person  
1803 with mental illness or judicial certification of eligibility for admission to a training center for persons  
1804 with ~~mental retardation~~ *intellectual disabilities* in accordance with the provisions of Chapters 1  
1805 (§ 37.2-100 et seq.) and 8 (§ 37.2-800 et seq.) of Title 37.2. Jurisdiction of the involuntary admission  
1806 and certification of adults shall be concurrent with the general district court.

1807 C. Except as provided in subsections D and H hereof, judicial consent to such activities as may  
1808 require parental consent may be given for a child who has been separated from his parents, guardian,  
1809 legal custodian or other person standing in loco parentis and is in the custody of the court when such  
1810 consent is required by law.

1811 D. Judicial consent for emergency surgical or medical treatment for a child who is neither married  
1812 nor has ever been married, when the consent of his parent, guardian, legal custodian or other person  
1813 standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person  
1814 standing in loco parentis (i) is not a resident of the Commonwealth, (ii) has his whereabouts unknown,  
1815 (iii) cannot be consulted with promptness, reasonable under the circumstances, or (iv) fails to give such  
1816 consent or provide such treatment when requested by the judge to do so.

1817 E. Any person charged with deserting, abandoning or failing to provide support for any person in  
1818 violation of law.

1819 F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

1820 1. Who has been abused or neglected;

1821 2. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817  
1822 or is otherwise before the court pursuant to subdivision A 4 of this section; or

1823 3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court  
1824 finds that such person has by overt act or omission induced, caused, encouraged or contributed to the  
1825 conduct of the child complained of in the petition.

1826 G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other  
1827 person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services  
1828 that are required by law to be provided for that child or such child's parent, guardian, legal custodian or  
1829 other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not  
1830 exclusive of that of courts having equity jurisdiction as provided in § 16.1-244.

1831 H. Judicial consent to apply for a work permit for a child when such child is separated from his  
1832 parents, legal guardian or other person standing in loco parentis.

1833 I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or  
1834 neglect of children or with any violation of law that causes or tends to cause a child to come within the  
1835 purview of this law, or with any other offense against the person of a child. In prosecution for felonies  
1836 over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is  
1837 probable cause.

1838 J. All offenses in which one family or household member is charged with an offense in which  
1839 another family or household member is the victim and all offenses under § 18.2-49.1.

1840 In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to  
1841 determining whether or not there is probable cause. Any objection based on jurisdiction under this  
1842 subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial,

before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for challenging directly or collaterally the jurisdiction of the court in which the case is tried.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such parental rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive parents.

L. Any person who seeks spousal support after having separated from his spouse. A decision under this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court. A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or 16.1-279.1.

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Juvenile Justice.

O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.) of this chapter.

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, or by another state in the same manner as if the orders were entered by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the juvenile and domestic relations district court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

R. Petitions for the purpose of obtaining an emergency protective order pursuant to § 16.1-253.4.

S. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

T. Petitions to enforce any request for information or subpoena that is not complied with or to review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect pursuant to § 63.2-1526.

U. Petitions filed in connection with parental placement adoption consent hearings pursuant to § 63.2-1233. Such proceedings shall be advanced on the docket so as to be heard by the court within 10 days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

V. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion if a minor elects not to seek consent of an authorized person.

After a hearing, a judge shall issue an order authorizing a physician to perform an abortion, without the consent of any authorized person, if he finds that (i) the minor is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independent of the wishes of any authorized person, or (ii) the minor is not mature enough or well enough informed to make such decision, but the desired abortion would be in her best interest.

If the judge authorizes an abortion based on the best interests of the minor, such order shall expressly state that such authorization is subject to the physician or his agent giving notice of intent to perform the abortion; however, no such notice shall be required if the judge finds that such notice would not be in the best interest of the minor. In determining whether notice is in the best interest of the minor, the judge shall consider the totality of the circumstances; however, he shall find that notice is not in the best interest of the minor if he finds that (i) one or more authorized persons with whom the minor regularly and customarily resides is abusive or neglectful, and (ii) every other authorized person, if any, is either abusive or neglectful or has refused to accept responsibility as parent, legal guardian, custodian or person standing in loco parentis.

The minor may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and shall, upon her request, appoint counsel for her.

Notwithstanding any other provision of law, the provisions of this subsection shall govern proceedings relating to consent for a minor's abortion. Court proceedings under this subsection and records of such proceedings shall be confidential. Such proceedings shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay in order to serve the best interests of the minor. Court proceedings under this subsection shall be heard and decided as soon as practicable but in no event later than four days after the petition is filed.

An expedited confidential appeal to the circuit court shall be available to any minor for whom the court denies an order authorizing an abortion without consent or without notice. Any such appeal shall be heard and decided no later than five days after the appeal is filed. The time periods required by this subsection shall be subject to subsection B of § 1-210. An order authorizing an abortion without consent or without notice shall not be subject to appeal.

No filing fees shall be required of the minor at trial or upon appeal.

1904 If either the original court or the circuit court fails to act within the time periods required by this  
1905 subsection, the court before which the proceeding is pending shall immediately authorize a physician to  
1906 perform the abortion without consent of or notice to an authorized person.

1907 Nothing contained in this subsection shall be construed to authorize a physician to perform an  
1908 abortion on a minor in circumstances or in a manner that would be unlawful if performed on an adult  
1909 woman.

1910 A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent  
1911 has been obtained or the minor delivers to the physician a court order entered pursuant to this section  
1912 and the physician or his agent provides such notice as such order may require. However, neither consent  
1913 nor judicial authorization nor notice shall be required if the minor declares that she is abused or  
1914 neglected and the attending physician has reason to suspect that the minor may be an abused or  
1915 neglected child as defined in § 63.2-100 and reports the suspected abuse or neglect in accordance with  
1916 § 63.2-1509; or if there is a medical emergency, in which case the attending physician shall certify the  
1917 facts justifying the exception in the minor's medical record.

1918 For purposes of this subsection:

1919 "Authorization" means the minor has delivered to the physician a notarized, written statement signed  
1920 by an authorized person that the authorized person knows of the minor's intent to have an abortion and  
1921 consents to such abortion being performed on the minor.

1922 "Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or  
1923 (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with  
1924 whom the minor regularly and customarily resides and who has care and control of the minor. Any  
1925 person who knows he is not an authorized person and who knowingly and willfully signs an  
1926 authorization statement consenting to an abortion for a minor is guilty of a Class 3 misdemeanor.

1927 "Consent" means that (i) the physician has given notice of intent to perform the abortion and has  
1928 received authorization from an authorized person, or (ii) at least one authorized person is present with  
1929 the minor seeking the abortion and provides written authorization to the physician, which shall be  
1930 witnessed by the physician or an agent thereof. In either case, the written authorization shall be  
1931 incorporated into the minor's medical record and maintained as a part thereof.

1932 "Medical emergency" means any condition which, on the basis of the physician's good faith clinical  
1933 judgment, so complicates the medical condition of the pregnant minor as to necessitate the immediate  
1934 abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial  
1935 and irreversible impairment of a major bodily function.

1936 "Notice of intent to perform the abortion" means that (i) the physician or his agent has given actual  
1937 notice of his intention to perform such abortion to an authorized person, either in person or by  
1938 telephone, at least 24 hours previous to the performance of the abortion; or (ii) the physician or his  
1939 agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person  
1940 by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at  
1941 least 72 hours prior to the performance of the abortion.

1942 "Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical  
1943 procedure or to induce a miscarriage as provided in § 18.2-72, 18.2-73, or 18.2-74.

1944 "Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid  
1945 marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any  
1946 of the Armed Forces of the United States; (iii) willingly living separate and apart from his or her  
1947 parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an  
1948 order of emancipation pursuant to Article 15 (§ 16.1-331 et seq.) of this chapter.

1949 W. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) of this chapter relating to standby  
1950 guardians for minor children.

1951 X. Petitions filed pursuant to § 18.2-370.5 for an order allowing the petitioner to enter and be present  
1952 on school or child day center property. In such cases jurisdiction shall be concurrent with and not  
1953 exclusive of circuit courts.

1954 The ages specified in this law refer to the age of the child at the time of the acts complained of in  
1955 the petition.

1956 Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of  
1957 any process in a proceeding pursuant to subdivision 3 of subsection A, except as provided in subdivision  
1958 A 6 of § 17.1-272, or subsection B, D, M or R of this section.

1959 Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of  
1960 subsection V shall be guilty of a Class 3 misdemeanor.

1961 § 16.1-269.1. Trial in circuit court; preliminary hearing; direct indictment; remand.

1962 A. Except as provided in subsections B and C, if a juvenile fourteen years of age or older at the time  
1963 of an alleged offense is charged with an offense which would be a felony if committed by an adult, the  
1964 court shall, on motion of the attorney for the Commonwealth and prior to a hearing on the merits, hold  
1965 a transfer hearing and may retain jurisdiction or transfer such juvenile for proper criminal proceedings to



the appropriate circuit court having criminal jurisdiction of such offenses if committed by an adult. Any transfer to the appropriate circuit court shall be subject to the following conditions:

1. Notice as prescribed in §§ 16.1-263 and 16.1-264 shall be given to the juvenile and his parent, guardian, legal custodian or other person standing in loco parentis; or attorney;

2. The juvenile court finds that probable cause exists to believe that the juvenile committed the delinquent act as alleged or a lesser included delinquent act which would be a felony if committed by an adult;

3. The juvenile is competent to stand trial. The juvenile is presumed to be competent and the burden is on the party alleging the juvenile is not competent to rebut the presumption by a preponderance of the evidence; and

4. The court finds by a preponderance of the evidence that the juvenile is not a proper person to remain within the jurisdiction of the juvenile court. In determining whether a juvenile is a proper person to remain within the jurisdiction of the juvenile court, the court shall consider, but not be limited to, the following factors:

a. The juvenile's age;

b. The seriousness and number of alleged offenses, including (i) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the alleged offense was against persons or property, with greater weight being given to offenses against persons, especially if death or bodily injury resulted; (iii) whether the maximum punishment for such an offense is greater than twenty years confinement if committed by an adult; (iv) whether the alleged offense involved the use of a firearm or other dangerous weapon by brandishing, threatening, displaying or otherwise employing such weapon; and (v) the nature of the juvenile's participation in the alleged offense;

c. Whether the juvenile can be retained in the juvenile justice system long enough for effective treatment and rehabilitation;

d. The appropriateness and availability of the services and dispositional alternatives in both the criminal justice and juvenile justice systems for dealing with the juvenile's problems;

e. The record and previous history of the juvenile in this or other jurisdictions, including (i) the number and nature of previous contacts with juvenile or circuit courts, (ii) the number and nature of prior periods of probation, (iii) the number and nature of prior commitments to juvenile correctional centers, (iv) the number and nature of previous residential and community-based treatments, (v) whether previous adjudications and commitments were for delinquent acts that involved the infliction of serious bodily injury, and (vi) whether the alleged offense is part of a repetitive pattern of similar adjudicated offenses;

f. Whether the juvenile has previously absconded from the legal custody of a juvenile correctional entity in this or any other jurisdiction;

g. The extent, if any, of the juvenile's degree of ~~mental retardation~~ *intellectual disability* or mental illness;

h. The juvenile's school record and education;

i. The juvenile's mental and emotional maturity; and

j. The juvenile's physical condition and physical maturity.

No transfer decision shall be precluded or reversed on the grounds that the court failed to consider any of the factors specified in subdivision A 4 of this section.

B. The juvenile court shall conduct a preliminary hearing whenever a juvenile fourteen years of age or older is charged with murder in violation of §§ 18.2-31, 18.2-32 or § 18.2-40, or aggravated malicious wounding in violation of § 18.2-51.2.

C. The juvenile court shall conduct a preliminary hearing whenever a juvenile fourteen years of age or older is charged with murder in violation of § 18.2-33, felonious injury by mob in violation of § 18.2-41, abduction in violation of § 18.2-48, malicious wounding in violation of § 18.2-51, malicious wounding of a law-enforcement officer in violation of § 18.2-51.1, felonious poisoning in violation of § 18.2-54.1, adulteration of products in violation of § 18.2-54.2, robbery in violation of § 18.2-58 or carjacking in violation of § 18.2-58.1, rape in violation of § 18.2-61, forcible sodomy in violation of § 18.2-67.1 or object sexual penetration in violation of § 18.2-67.2, provided the attorney for the Commonwealth gives written notice of his intent to proceed pursuant to this subsection. The notice shall be filed with the court and mailed or delivered to counsel for the juvenile or, if the juvenile is not then represented by counsel, to the juvenile and a parent, guardian or other person standing in loco parentis with respect to the juvenile at least seven days prior to the preliminary hearing. If the attorney for the Commonwealth elects not to give such notice, or if he elects to withdraw the notice prior to certification of the charge to the grand jury, he may proceed as provided in subsection A.

D. Upon a finding of probable cause pursuant to a preliminary hearing under subsection B or C, the juvenile court shall certify the charge, and all ancillary charges, to the grand jury. Such certification shall divest the juvenile court of jurisdiction as to the charge and any ancillary charges. Nothing in this

subsection shall divest the juvenile court of jurisdiction over any matters unrelated to such charge and ancillary charges which may otherwise be properly within the jurisdiction of the juvenile court.

If the court does not find probable cause to believe that the juvenile has committed the violent juvenile felony as charged in the petition or warrant or if the petition or warrant is terminated by dismissal in the juvenile court, the attorney for the Commonwealth may seek a direct indictment in the circuit court. If the petition or warrant is terminated by nolle prosequi in the juvenile court, the attorney for the Commonwealth may seek an indictment only after a preliminary hearing in juvenile court.

If the court finds that the juvenile was not fourteen years of age or older at the time of the alleged commission of the offense or that the conditions specified in subdivision 1, 2, or 3 of subsection A have not been met, the case shall proceed as otherwise provided for by law.

E. An indictment in the circuit court cures any error or defect in any proceeding held in the juvenile court except with respect to the juvenile's age. If an indictment is terminated by nolle prosequi, the Commonwealth may reinstate the proceeding by seeking a subsequent indictment.

§ 16.1-275. Physical and mental examinations and treatment; nursing and medical care.

The juvenile court or the circuit court may cause any juvenile within its jurisdiction under the provisions of this law to be physically examined and treated by a physician or to be examined and treated at a local mental health center. If no such appropriate facility is available locally, the court may order the juvenile to be examined and treated by any physician or psychiatrist or examined by a clinical psychologist. The Commissioner of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services shall provide for distribution a list of appropriate mental health centers available throughout the Commonwealth. Upon the written recommendation of the person examining the juvenile that an adequate evaluation of the juvenile's treatment needs can only be performed in an inpatient hospital setting, the court shall have the power to send any such juvenile to a state mental hospital for not more than 10 days for the purpose of obtaining a recommendation for the treatment of the juvenile. No juvenile sent to a state mental hospital pursuant to this provision shall be held or cared for in any maximum security unit where adults determined to be criminally insane reside; the juvenile shall be kept separate and apart from such adults. However, the Commissioner of the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services may place a juvenile who has been certified to the circuit court for trial as an adult pursuant to § 16.1-269.6 or § 16.1-270 or who has been convicted as an adult of a felony in the circuit court in a unit appropriate for the care and treatment of persons under a criminal charge when, in his discretion, such placement is necessary to protect the security or safety of other patients, staff or the public.

Whenever the parent or other person responsible for the care and support of a juvenile is determined by the court to be financially unable to pay the costs of such examination as ordered by the juvenile court or the circuit court, such costs may be paid according to standards, procedures and rates adopted by the State Board, from funds appropriated in the general appropriation act for the Department.

The juvenile court or the circuit court may cause any juvenile within its jurisdiction who is found to be delinquent for an offense that is eligible for commitment pursuant to subdivision A 14 of § 16.1-278.8 or § 16.1-285.1 to be placed in the temporary custody of the Department of Juvenile Justice for a period of time not to exceed 30 days for diagnostic assessment services after the adjudicatory hearing and prior to final disposition of his or her case. Prior to such a placement, the Department shall determine that the personnel, services and space are available in the appropriate correctional facility for the care, supervision and study of such juvenile and that the juvenile's case is appropriate for referral for diagnostic services.

Whenever a juvenile concerning whom a petition has been filed appears to be in need of nursing, medical or surgical care, the juvenile court or the circuit court may order the parent or other person responsible for the care and support of the juvenile to provide such care in a hospital or otherwise and to pay the expenses thereof. If the parent or other person is unable or fails to provide such care, the juvenile court or the circuit court may refer the matter to the authority designated in accordance with law for the determination of eligibility for such services in the county or city in which such juvenile or his parents have residence or legal domicile.

In any such case, if a parent who is able to do so fails or refuses to comply with the order, the juvenile court or the circuit court may proceed against him as for contempt or may proceed against him for nonsupport.

§ 16.1-278.8. Delinquent juveniles.

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

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

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

3. Order the parent of a juvenile living with him 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 juvenile and his parent;

4. Defer disposition for a specific period of time established by the court with due regard for the gravity of the offense and the juvenile's history, after which time the charge may be dismissed by the judge if the juvenile exhibits good behavior during the period for which disposition is deferred;

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

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

6. Order the parent of a juvenile with whom the juvenile does not reside 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 juvenile where the court determines this participation to be in the best interest of the juvenile and other parties concerned and where the court determines it reasonable to expect the parent to be able to comply with such order;

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

7a. Place the juvenile on probation and order treatment for the abuse or dependence on alcohol or drugs in a program licensed by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services for the treatment of juveniles for substance abuse provided that (i) the juvenile has received a substance abuse screening and assessment pursuant to § 16.1-273 and that such assessment reasonably indicates that the commission of the offense was motivated by, or closely related to, the habitual use of alcohol or drugs and indicates that the juvenile is in need of treatment for this condition; (ii) the juvenile has not previously been and is not currently being adjudicated for a violent juvenile felony; and (iii) such facility is available. Upon the juvenile's withdrawal, removal, or refusal to comply with the conditions of participation in the program, he shall be brought before the court for a hearing at which the court may impose any other disposition authorized by this section. The court shall review such placements at 30-day intervals;

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

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

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

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

The Department of Motor Vehicles shall refuse to issue a driver's license to any juvenile denied a

2150 driver's license until such time as is stipulated in the court order or until notification by the court of  
2151 withdrawal of the order imposing the curfew;

2152 10. Require the juvenile to make restitution or reparation to the aggrieved party or parties for actual  
2153 damages or loss caused by the offense for which the juvenile was found to be delinquent;

2154 11. Require the juvenile to participate in a public service project under such conditions as the court  
2155 prescribes;

2156 12. In case of traffic violations, impose only those penalties that are authorized to be imposed on  
2157 adults for such violations. However, for those violations punishable by confinement if committed by an  
2158 adult, confinement shall be imposed only as authorized by this title;

2159 13. Transfer legal custody to any of the following:

2160 a. A relative or other individual who, after study, is found by the court to be qualified to receive and  
2161 care for the juvenile;

2162 b. A child welfare agency, private organization or facility that is licensed or otherwise authorized by  
2163 law to receive and provide care for such juvenile. The court shall not transfer legal custody of a  
2164 delinquent juvenile to an agency, organization or facility outside of the Commonwealth without the  
2165 approval of the Director; or

2166 c. The local board of social services of the county or city in which the court has jurisdiction or, at  
2167 the discretion of the court, to the local board of the county or city in which the juvenile has residence if  
2168 other than the county or city in which the court has jurisdiction. The board shall accept the juvenile for  
2169 care and custody, provided that it has been given reasonable notice of the pendency of the case and an  
2170 opportunity to be heard. However, in an emergency in the county or city in which the court has  
2171 jurisdiction, such local board may be required to temporarily accept a juvenile for a period not to exceed  
2172 14 days without prior notice or an opportunity to be heard if the judge entering the placement order  
2173 describes the emergency and the need for such temporary placement in the order. Nothing in this  
2174 subdivision shall prohibit the commitment of a juvenile to any local board of social services in the  
2175 Commonwealth when such local board consents to the commitment. The board to which the juvenile is  
2176 committed shall have the final authority to determine the appropriate placement for the juvenile. Any  
2177 order authorizing removal from the home and transferring legal custody of a juvenile to a local board of  
2178 social services as provided in this subdivision shall be entered only upon a finding by the court that  
2179 reasonable efforts have been made to prevent removal and that continued placement in the home would  
2180 be contrary to the welfare of the juvenile, and the order shall so state;

2181 14. Commit the juvenile to the Department of Juvenile Justice, but only if he is 11 years of age or  
2182 older and the current offense is (i) an offense that would be a felony if committed by an adult, (ii) an  
2183 offense that would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously  
2184 been found to be delinquent based on an offense that would be a felony if committed by an adult, or  
2185 (iii) an offense that would be a Class 1 misdemeanor if committed by an adult and the juvenile has  
2186 previously been adjudicated delinquent of three or more offenses that would be a Class 1 misdemeanor  
2187 if committed by an adult, and each such offense was not a part of a common act, transaction or scheme;

2188 15. Impose the penalty authorized by § 16.1-284;

2189 16. Impose the penalty authorized by § 16.1-284.1;

2190 17. Impose the penalty authorized by § 16.1-285.1;

2191 18. Impose the penalty authorized by § 16.1-278.9; or

2192 19. Require the juvenile to participate in a gang-activity prevention program including, but not  
2193 limited to, programs funded under the Virginia Juvenile Community Crime Control Act pursuant to  
2194 § 16.1-309.7, if available, when a juvenile has been found delinquent of any of the following violations:  
2195 § 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127,  
2196 18.2-128, 18.2-137, 18.2-138, 18.2-146, or 18.2-147, or any violation of a local ordinance adopted  
2197 pursuant to § 15.2-1812.2.

2198 B. If the court finds a juvenile delinquent of any of the following offenses, the court shall require the  
2199 juvenile to make at least partial restitution or reparation for any property damage, for loss caused by the  
2200 offense, or for actual medical expenses incurred by the victim as a result of the offense: § 18.2-51,  
2201 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128,  
2202 18.2-137, 18.2-138, 18.2-146, or 18.2-147; or for any violation of a local ordinance adopted pursuant to  
2203 § 15.2-1812.2. The court shall further require the juvenile to participate in a community service project  
2204 under such conditions as the court prescribes.

2205 § 16.1-278.8:01. Juveniles found delinquent of first drug offense; screening; assessment; drug tests;  
2206 costs and fees; education or treatment programs.

2207 Whenever any juvenile who has not previously been found delinquent of any offense under Article 1  
2208 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or under any statute of the United States or of any state  
2209 relating to narcotic drugs, marijuana, or stimulant, depressant or hallucinogenic drugs, or has not  
2210 previously had a proceeding against him for a violation of such an offense dismissed as provided in  
2211 § 18.2-251, is found delinquent of any offense concerning the use, in any manner, of drugs, controlled

substances, narcotics, marijuana, noxious chemical substances and like substances, the juvenile court or the circuit court shall require such juvenile to undergo a substance abuse screening pursuant to § 16.1-273 and to submit to such periodic substance abuse testing, to include alcohol testing, as may be directed by the court. Such testing shall be conducted by a court services unit of the Department of Juvenile Justice, or by a locally operated court services unit or by personnel of any program or agency approved by the Department. The cost of such testing ordered by the court shall be paid by the Commonwealth from funds appropriated to the Department for this purpose. The court shall also order the juvenile to undergo such treatment or education program for substance abuse, if available, as the court deems appropriate based upon consideration of the substance abuse assessment. The treatment or education shall be provided by a program licensed by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services or by a similar program available through a facility or program operated by or under contract to the Department of Juvenile Justice or a locally operated court services unit or a program funded through the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq.).

§ 16.1-278.11. Mental illness and mental retardation.

In cases involving a person who is involuntarily admitted because of a mental illness or is judicially certified as eligible for admission to a training center for persons with ~~mental retardation~~ *intellectual disabilities*, disposition shall be in accordance with the provisions of Chapters 1 (§ 37.2-100 et seq.) and 8 (§ 37.2-800 et seq.) of Title 37.2. A child shall not be committed pursuant to §§ 16.1-278.2 through 16.1-278.8 or the provisions of Title 37.2 to a maximum security unit within any state hospital where adults determined to be criminally insane reside.

§ 16.1-280. Commitment of mentally ill or intellectually disabled juveniles.

When any juvenile court has found a juvenile to be in need of services or delinquent pursuant to the provisions of this law and reasonably believes such juvenile is mentally ill or ~~mentally retarded~~ *intellectually disabled*, the court may commit him to an appropriate hospital in accordance with the provisions of §§ 16.1-338 through 16.1-345 or admit him to a training center in accordance with the provisions of § 37.2-806 for observation as to his mental condition. No juvenile shall be committed pursuant to this section or §§ 16.1-338 through 16.1-345 to a maximum security unit within any state hospital where adults determined to be criminally insane reside. However, the Commissioner of the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services may place a juvenile who has been certified to the circuit court for trial as an adult pursuant to § 16.1-269.6 or § 16.1-270 or who has been convicted as an adult of a felony in the circuit court in a unit appropriate for the care and treatment of persons under a criminal charge when, in his discretion, such placement is necessary to protect the security or safety of other patients, staff or public. The Commissioner shall notify the committing court of any placement in such unit. The committing court shall review the placement at thirty-day intervals.

§ 16.1-293.1. Mental health services transition plan.

A. The Board of Juvenile Justice, after consultation with the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, shall promulgate regulations for the planning and provision of post-release services for persons committed to the Department of Juvenile Justice pursuant to subdivision A 14 of § 16.1-278.8 or placed in a postdispositional detention program pursuant to subsection B of § 16.1-284.1 and identified as having a recognized mental health, substance abuse, or other therapeutic treatment need. The plan shall be in writing and completed prior to the person's release. The purpose of the plan shall be to ensure continuity of necessary treatment and services.

B. The mental health services transition plan shall identify the mental health, substance abuse, or other therapeutic needs of the person being released. Appropriate treatment providers and other persons from state and local agencies or entities, as defined by the Board, shall participate in the development of the plan. Appropriate family members, caregivers, or other persons, as defined by the Board, shall be invited to participate in the development of the person's plan.

C. Prior to the person's release from incarceration, the identified agency or agencies responsible for the case management of the mental health services transition plan shall make the necessary referrals specified in the plan and assist the person in applying for insurance and other services identified in the plan, including completing and submitting applications that may only be submitted upon release.

§ 16.1-336. Definitions.

When used in this article, unless the context otherwise requires:

"Consent" means the voluntary, express, and informed agreement to treatment in a mental health facility by a minor fourteen years of age or older and by a parent or a legally authorized custodian.

"Inpatient treatment" means placement for observation, diagnosis, or treatment of mental illness in a psychiatric hospital or in any other type of mental health facility determined by the State Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services Board to be substantially similar

2273 to a psychiatric hospital with respect to restrictions on freedom and therapeutic intrusiveness.

2274 "Judge" means a juvenile and domestic relations district judge. In addition, "judge" includes a retired  
2275 judge sitting by designation pursuant to § 16.1-69.35, substitute judge, or special justice authorized by  
2276 § 37.2-803 who has completed a training program regarding the provisions of this article, prescribed by  
2277 the Executive Secretary of the Supreme Court.

2278 "Least restrictive alternative" means the treatment and conditions of treatment which, separately and  
2279 in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a  
2280 substantial therapeutic benefit or to protect the minor or others from physical injury.

2281 "Mental health facility" means a public or private facility for the treatment of mental illness operated  
2282 or licensed by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance  
2283 Abuse Services.

2284 "Mental illness" means a substantial disorder of the minor's cognitive, volitional, or emotional  
2285 processes that demonstrably and significantly impairs judgment or capacity to recognize reality or to  
2286 control behavior. "Mental illness" may include substance abuse, which is the use, without compelling  
2287 medical reason, of any substance which results in psychological or physiological dependency as a  
2288 function of continued use in such a manner as to induce mental, emotional, or physical impairment and  
2289 cause socially dysfunctional or socially disordering behavior. ~~Mental retardation~~ *An intellectual disability*,  
2290 head injury, a learning disability, or a seizure disorder is not sufficient, in itself, to justify a finding of  
2291 mental illness within the meaning of this article.

2292 "Minor" means a person less than eighteen years of age.

2293 "Parent" means (i) a biological or adoptive parent who has legal custody of the minor, including  
2294 either parent if custody is shared under a joint decree or agreement, (ii) a biological or adoptive parent  
2295 with whom the minor regularly resides, (iii) a person judicially appointed as a legal guardian of the  
2296 minor, or (iv) a person who exercises the rights and responsibilities of legal custody by delegation from  
2297 a biological or adoptive parent, upon provisional adoption or otherwise by operation of law. The director  
2298 of the local department of social services, or his designee, may stand as the minor's parent when the  
2299 minor is in the legal custody of the local department of social services.

2300 "Qualified evaluator" means a psychiatrist or a psychologist licensed in Virginia by either the Board  
2301 of Medicine or the Board of Psychology who is skilled in the diagnosis and treatment of mental illness  
2302 in minors and familiar with the provisions of this article. If such psychiatrist or psychologist is  
2303 unavailable, any mental health professional (i) licensed in Virginia through the Department of Health  
2304 Professions or (ii) employed by a community services board who is skilled in the diagnosis and  
2305 treatment of mental illness in minors and who is familiar with the provisions of this article may serve as  
2306 the qualified evaluator.

2307 "Treatment" means any planned intervention intended to improve a minor's functioning in those areas  
2308 which show impairment as a result of mental illness.

2309 § 16.1-345. Involuntary commitment; criteria.

2310 The court shall order the involuntary commitment of the minor to a mental health facility for  
2311 treatment for a period not to exceed 90 days if it finds, by clear and convincing evidence, that:

2312 1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent  
2313 that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is  
2314 experiencing a serious deterioration of his ability to care for himself in a developmentally  
2315 age-appropriate manner, as evidenced by delusory thinking or by a significant impairment of  
2316 functioning in hydration, nutrition, self-protection, or self-control;

2317 2. The minor is in need of compulsory treatment for a mental illness and is reasonably likely to  
2318 benefit from the proposed treatment; and

2319 3. If inpatient treatment is ordered, such treatment is the least restrictive alternative that meets the  
2320 minor's needs. If the court finds that inpatient treatment is not the least restrictive treatment, the court  
2321 may order the minor to participate in outpatient or other clinically appropriate treatment.

2322 A minor who has been hospitalized while properly detained for a criminal offense by a juvenile and  
2323 domestic relations district court shall be returned to the detention home following completion of a period  
2324 of inpatient treatment, unless the court having jurisdiction over the criminal case orders that the minor  
2325 be released from custody.

2326 In conducting an evaluation of a minor who has been properly detained, if the evaluator finds,  
2327 irrespective of the fact that the minor has been detained, that the minor meets the criteria for involuntary  
2328 commitment in this section, the evaluator shall recommend that the minor meets the criteria for  
2329 involuntary commitment.

2330 In no event shall a minor who has been properly detained by a juvenile and domestic relations  
2331 district court, and who meets criteria for involuntary commitment, have the right to make application for  
2332 voluntary admission and treatment as may otherwise be provided for in this section.

2333 If the parent or parents with whom the minor resides are not willing to approve the proposed  
2334 commitment, the court shall order inpatient treatment only if it finds, in addition to the criteria specified

in this section, that such treatment is necessary to protect the minor's life, health, or normal development, and that issuance of a removal order or protective order is authorized by § 16.1-252 or 16.1-253.

Upon finding that the best interests of the minor so require, the court may enter an order directing either or both of the minor's parents to comply with reasonable conditions relating to the minor's treatment.

If the minor is committed to inpatient treatment, such placement shall be in a mental health facility for inpatient treatment designated by the community services board which serves the political subdivision in which the minor was evaluated pursuant to § 16.1-342. If the community services board does not provide a placement recommendation at the hearing, the minor shall be placed in a mental health facility designated by the Commissioner of the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services. The judge shall order the sheriff to transport the minor to the designated mental health facility as specified in § 37.2-829. The transportation of the committed minor by the minor's parent may be authorized at the discretion of the judge.

§ 16.1-356. Raising question of competency to stand trial; evaluation and determination of competency.

A. If, at any time after the attorney for the juvenile has been retained or appointed pursuant to a delinquency proceeding and before the end of trial, the court finds, sua sponte or upon hearing evidence or representations of counsel for the juvenile or the attorney for the Commonwealth, that there is probable cause to believe that the juvenile lacks substantial capacity to understand the proceedings against him or to assist his attorney in his own defense, the court shall order that a competency evaluation be performed by at least one psychiatrist, clinical psychologist, licensed professional counselor, licensed clinical social worker, or licensed marriage and family therapist, who is qualified by training and experience in the forensic evaluation of juveniles.

The Commissioner of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services shall approve the training and qualifications for individuals authorized to conduct juvenile competency evaluations and provide restoration services to juveniles pursuant to this article. The Commissioner shall also provide all juvenile courts with a list of guidelines for the court to use in the determination of qualifying individuals as experts in matters relating to juvenile competency and restoration.

B. The evaluation shall be performed on an outpatient basis at a community services board or behavioral health authority, juvenile detention home or juvenile justice facility unless the court specifically finds that (i) the results of the outpatient competency evaluation indicate that hospitalization of the juvenile for evaluation of competency is necessary or (ii) the juvenile is currently hospitalized in a psychiatric hospital. If one of these findings is made, the court, under authority of this subsection, may order the juvenile sent to a hospital designated by the Commissioner of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services as appropriate for the evaluation of juveniles against whom a delinquency petition has been filed.

C. The court shall require the attorney for the Commonwealth to provide to the evaluators appointed under subsection A any information relevant to the evaluation, including, but not limited to (i) a copy of the warrant or petition, (ii) the names and addresses of the attorney for the Commonwealth, the attorney for the juvenile, and the judge ordering the evaluation; and (iii) information about the alleged offense. The court shall require the attorney for the juvenile to provide to the evaluator only the psychiatric records and other information that is deemed relevant to the evaluation of competency. The moving party shall provide the evaluator a summary of the reasons for the evaluation request. All information required by this subsection shall be provided to the evaluator within 96 hours of the issuance of the court order requiring the evaluation and when applicable, shall be submitted prior to admission to the facility providing the inpatient evaluation. If the 96-hour period expires on a Saturday, Sunday or other legal holiday, the 96 hours shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

D. If the juvenile is hospitalized under the provisions of subsection B, the juvenile shall be hospitalized for such time as the director of the hospital deems necessary to perform an adequate evaluation of the juvenile's competency, but not to exceed 10 days from the date of admission to the hospital. All evaluations shall be completed and the report filed with the court within 14 days of receipt by the evaluator of all information required under subsection C.

E. Upon completion of the evaluation, the evaluator shall promptly and in no event exceeding 14 days after receipt of all required information submit the report in writing to the court and the attorneys of record concerning (i) the juvenile's capacity to understand the proceedings against him; (ii) his ability to assist his attorney; and (iii) his need for services in the event he is found incompetent, including a description of the suggested necessary services and least restrictive setting to assist the juvenile in restoration to competency. No statements of the juvenile relating to the alleged offense shall be included

2396 in the report.

2397 F. After receiving the report described in subsection E, the court shall promptly determine whether  
2398 the juvenile is competent to stand trial for adjudication or disposition. A hearing on the juvenile's  
2399 competency is not required unless one is requested by the attorney for the Commonwealth or the  
2400 attorney for the juvenile or when required under § 16.1-357 B. If a hearing is held, the party alleging  
2401 that the juvenile is incompetent shall bear the burden of proving by a preponderance of the evidence the  
2402 juvenile's incompetency. The juvenile shall have the right to notice of the hearing and the right to  
2403 personally participate in and introduce evidence at the hearing.

2404 If the juvenile is otherwise able to understand the charges against him and assist in his defense, a  
2405 finding of incompetency shall not be made based solely on any or all of the following: (i) the juvenile's  
2406 age or developmental factors, (ii) the juvenile's claim to be unable to remember the time period  
2407 surrounding the alleged offense, or (iii) the fact that the juvenile is under the influence of medication.

2408 § 16.1-357. Disposition when juvenile found incompetent.

2409 A. Upon finding pursuant to subsection F of § 16.1-356 that the juvenile is incompetent, the court  
2410 shall order that the juvenile receive services to restore his competency in either a nonsecure community  
2411 setting or a secure facility as defined in § 16.1-228. A copy of the order shall be forwarded to the  
2412 Commissioner of Mental Health, ~~Mental Retardation~~*Intellectual Disability* and Substance Abuse  
2413 Services, who shall arrange for the provision of restoration services in a manner consistent with the  
2414 order. Any report submitted pursuant to subsection E of § 16.1-356 shall be made available to the agent  
2415 providing restoration.

2416 B. If the court finds the juvenile incompetent but restorable to competency in the foreseeable future,  
2417 it shall order restoration services for up to three months. At the end of three months from the date  
2418 restoration is ordered under subsection A of this section, if the juvenile remains incompetent in the  
2419 opinion of the agent providing restoration, the agent shall so notify the court and make recommendations  
2420 concerning disposition of the juvenile. The court shall hold a hearing according to the procedures  
2421 specified in subsection F of § 16.1-356 and, if it finds the juvenile unrestorably incompetent, shall order  
2422 one of the dispositions pursuant to § 16.1-358. If the court finds the juvenile incompetent but restorable  
2423 to competency, it may order continued restoration services for additional three-month periods, provided a  
2424 hearing pursuant to subsection F of § 16.1-356 is held at the completion of each such period and the  
2425 juvenile continues to be incompetent but restorable to competency in the foreseeable future.

2426 C. If, at any time after the juvenile is ordered to undergo services under subsection A of this section,  
2427 the agent providing restoration believes the juvenile's competency is restored, the agent shall  
2428 immediately send a report to the court as prescribed in subsection E of § 16.1-356. The court shall make  
2429 a ruling on the juvenile's competency according to the procedures specified in subsection F of  
2430 § 16.1-356.

2431 § 16.1-361. Compensation of experts.

2432 Each psychiatrist, clinical psychologist, licensed clinical social worker, licensed professional  
2433 counselor, licensed marriage and family therapist, or other expert appointed by the court to render  
2434 professional service pursuant to § 16.1-356, shall receive a reasonable fee for such service. With the  
2435 exception of services provided by state mental health ~~or mental retardation~~ *or facilities for*  
2436 *individuals with intellectual disabilities*, the fee shall be determined in each instance by the court that  
2437 appointed the expert, in accordance with guidelines established by the Supreme Court after consultation  
2438 with the Department of Mental Health, ~~Mental Retardation~~*Intellectual Disability* and Substance Abuse  
2439 Services. If any such expert is required to appear as a witness in any hearing held pursuant to  
2440 § 16.1-356, he shall receive mileage and a fee of \$100 for each day during which he is required to  
2441 serve. An itemized account of expenses, duly sworn to, must be presented to the court, and when  
2442 allowed shall be certified to the Supreme Court for payment out of the state treasury, and be charged  
2443 against the appropriations made to pay criminal charges. Allowance for the fee and for the per diem  
2444 authorized shall also be made by order of the court, duly certified to the Supreme Court for payment out  
2445 of the appropriation to pay criminal charges.

2446 § 18.2-10. Punishment for conviction of felony; penalty.

2447 The authorized punishments for conviction of a felony are:

2448 (a) For Class 1 felonies, death, if the person so convicted was 18 years of age or older at the time of  
2449 the offense and is not determined to be ~~mentally retarded~~ *have an intellectual disability* pursuant to  
2450 § 19.2-264.3:1.1, or imprisonment for life and, subject to subdivision (g), a fine of not more than  
2451 \$100,000. If the person was under 18 years of age at the time of the offense or is determined to be  
2452 ~~mentally retarded~~ *have an intellectual disability* pursuant to § 19.2-264.3:1.1, the punishment shall be  
2453 imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000.

2454 (b) For Class 2 felonies, imprisonment for life or for any term not less than 20 years and, subject to  
2455 subdivision (g), a fine of not more than \$100,000.

2456 (c) For Class 3 felonies, a term of imprisonment of not less than five years nor more than 20 years  
2457 and, subject to subdivision (g), a fine of not more than \$100,000.



(d) For Class 4 felonies, a term of imprisonment of not less than two years nor more than 10 years and, subject to subdivision (g), a fine of not more than \$100,000.

(e) For Class 5 felonies, a term of imprisonment of not less than one year nor more than 10 years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

(f) For Class 6 felonies, a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

(g) Except as specifically authorized in subdivision (e) or (f), or in Class 1 felonies for which a sentence of death is imposed, the court shall impose either a sentence of imprisonment together with a fine, or imprisonment only. However, if the defendant is not a natural person, the court shall impose only a fine.

For any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, except in cases in which the court orders a suspended term of confinement of at least six months, impose an additional term of not less than six months nor more than three years, which shall be suspended conditioned upon successful completion of a period of post-release supervision pursuant to § 19.2-295.2 and compliance with such other terms as the sentencing court may require. However, such additional term may only be imposed when the sentence includes an active term of incarceration in a correctional facility.

For a felony offense prohibiting proximity to children as described in subsection A of § 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in subsection B of that section in addition to any other penalty provided by law.

§ 18.2-73. When abortion lawful during second trimester of pregnancy.

Notwithstanding any of the provisions of § 18.2-71 and in addition to the provisions of § 18.2-72, it shall be lawful for any physician licensed by the Board of Medicine to practice medicine and surgery, to terminate or attempt to terminate a human pregnancy or aid or assist in the termination of a human pregnancy by performing an abortion or causing a miscarriage on any woman during the second trimester of pregnancy and prior to the third trimester of pregnancy provided such procedure is performed in a hospital licensed by the State Department of Health or under the control of the State Board of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services.

§ 18.2-74. When abortion or termination of pregnancy lawful after second trimester of pregnancy.

Notwithstanding any of the provisions of § 18.2-71 and in addition to the provisions of §§ 18.2-72 and 18.2-73, it shall be lawful for any physician licensed by the Board of Medicine to practice medicine and surgery to terminate or attempt to terminate a human pregnancy or aid or assist in the termination of a human pregnancy by performing an abortion or causing a miscarriage on any woman in a stage of pregnancy subsequent to the second trimester provided the following conditions are met:

(a) Said operation is performed in a hospital licensed by the Virginia State Department of Health or under the control of the State Board of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services.

(b) The physician and two consulting physicians certify and so enter in the hospital record of the woman, that in their medical opinion, based upon their best clinical judgment, the continuation of the pregnancy is likely to result in the death of the woman or substantially and irremediably impair the mental or physical health of the woman.

(c) Measures for life support for the product of such abortion or miscarriage must be available and utilized if there is any clearly visible evidence of viability.

§ 18.2-251. Persons charged with first offense may be placed on probation; conditions; substance abuse screening, assessment treatment and education programs or services; drug tests; costs and fees; violations; discharge.

Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section, pleads guilty to or enters a plea of not guilty to possession of a controlled substance under § 18.2-250 or to possession of marijuana under § 18.2-250.1, the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions.

As a term or condition, the court shall require the accused to undergo a substance abuse assessment pursuant to § 18.2-251.01 or § 19.2-299.2, as appropriate, and enter treatment and/or education program or services, if available, such as, in the opinion of the court, may be best suited to the needs of the accused based upon consideration of the substance abuse assessment. The program or services may be

2519 located in the judicial district in which the charge is brought or in any other judicial district as the court  
2520 may provide. The services shall be provided by (i) a program licensed by the Department of Mental  
2521 Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, by a similar program  
2522 which is made available through the Department of Corrections, (ii) a local community-based probation  
2523 services agency established pursuant to § 9.1-174, or (iii) an ASAP program certified by the  
2524 Commission on VASAP.

2525 The court shall require the person entering such program under the provisions of this section to pay  
2526 all or part of the costs of the program, including the costs of the screening, assessment, testing, and  
2527 treatment, based upon the accused's ability to pay unless the person is determined by the court to be  
2528 indigent.

2529 As a condition of probation, the court shall require the accused (i) to successfully complete treatment  
2530 or education program or services, (ii) to remain drug and alcohol free during the period of probation and  
2531 submit to such tests during that period as may be necessary and appropriate to determine if the accused  
2532 is drug and alcohol free, (iii) to make reasonable efforts to secure and maintain employment, and (iv) to  
2533 comply with a plan of at least 100 hours of community service for a felony and up to 24 hours of  
2534 community service for a misdemeanor. Such testing shall be conducted by personnel of the supervising  
2535 probation agency or personnel of any program or agency approved by the supervising probation agency.

2536 The court shall, unless done at arrest, order the accused to report to the original arresting  
2537 law-enforcement agency to submit to fingerprinting.

2538 Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as  
2539 otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person  
2540 and dismiss the proceedings against him. Discharge and dismissal under this section shall be without  
2541 adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent  
2542 proceedings.

2543 Notwithstanding any other provision of this section, whenever a court places an individual on  
2544 probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction  
2545 for purposes of §§ 18.2-259.1, 22.1-315 and 46.2-390.1, and the driver's license forfeiture provisions of  
2546 those sections shall be imposed. The provisions of this paragraph shall not be applicable to any offense  
2547 for which a juvenile has had his license suspended or denied pursuant to § 16.1-278.9 for the same  
2548 offense.

2549 § 18.2-251.01. Substance abuse screening and assessment for felony convictions.

2550 A. When a person is convicted of a felony, not a capital offense, committed on or after January 1,  
2551 2000, he shall be required to undergo a substance abuse screening and, if the screening indicates a  
2552 substance abuse or dependence problem, an assessment by a certified substance abuse counselor as  
2553 defined in § 54.1-3500 employed by the Department of Corrections or by an agency employee under the  
2554 supervision of such counselor. If the person is determined to have a substance abuse problem, the court  
2555 shall require him to enter treatment and/or education program or services, if available, which, in the  
2556 opinion of the court, is best suited to the needs of the person. The program or services may be located  
2557 in the judicial district in which the conviction was had or in any other judicial district as the court may  
2558 provide. The treatment and/or education program or services shall be licensed by the Department of  
2559 Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services or shall be a  
2560 similar program or services which are made available through the Department of Corrections if the court  
2561 imposes a sentence of one year or more or, if the court imposes a sentence of 12 months or less, by a  
2562 similar program or services available through a local or regional jail, a local community-based probation  
2563 services agency established pursuant to § 9.1-174, or an ASAP program certified by the Commission on  
2564 VASAP. The services agency or program may require the person entering such program or services  
2565 under the provisions of this section to pay a fee for the education and treatment component, or both,  
2566 based upon the defendant's ability to pay.

2567 B. As a condition of any suspended sentence and probation, the court shall order the person to  
2568 undergo periodic testing and treatment for substance abuse, if available, as the court deems appropriate  
2569 based upon consideration of the substance abuse assessment.

2570 § 18.2-252. Suspended sentence conditioned upon substance abuse screening, assessment, testing, and  
2571 treatment or education.

2572 The trial judge or court trying the case of any person found guilty of violating any law concerning  
2573 the use, in any manner, of drugs, controlled substances, narcotics, marijuana, noxious chemical  
2574 substances and like substances, shall condition any suspended sentence by first requiring such person to  
2575 agree to undergo a substance abuse screening pursuant to § 18.2-251.01 and to submit to such periodic  
2576 substance abuse testing, to include alcohol testing, as may be directed by the court. Such testing shall be  
2577 conducted by the supervising probation agency or by personnel of any program or agency approved by  
2578 the supervising probation agency. The cost of such testing ordered by the court shall be paid by the  
2579 Commonwealth and taxed as a part of the costs of such criminal proceedings. The judge or court shall  
2580 order the person, as a condition of any suspended sentence, to undergo such treatment or education for

substance abuse, if available, as the judge or court deems appropriate based upon consideration of the substance abuse assessment. The treatment or education shall be provided by a program or agency licensed by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, by a similar program or services available through the Department of Corrections if the court imposes a sentence of one year or more or, if the court imposes a sentence of 12 months or less, by a similar program or services available through a local or regional jail, a local community-based probation services agency established pursuant to § 9.1-174, or an ASAP program certified by the Commission on VASAP.

§ 18.2-254. Commitment of convicted person for treatment for substance abuse.

A. Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, stimulant, depressant, or hallucinogenic drugs or has not previously had a proceeding against him for violation of such an offense dismissed as provided in § 18.2-251 is found guilty of violating any law concerning the use, in any manner, of drugs, controlled substances, narcotics, marijuana, noxious chemical substances, and like substances, the judge or court shall require such person to undergo a substance abuse screening pursuant to § 18.2-251.01 and to submit to such periodic substance abuse testing, to include alcohol testing, as may be directed by the court. The cost of such testing ordered by the court shall be paid by the Commonwealth and taxed as a part of the costs of the criminal proceedings. The judge or court shall also order the person to undergo such treatment or education for substance abuse, if available, as the judge or court deems appropriate based upon consideration of the substance abuse assessment. The treatment or education shall be provided by a program or agency licensed by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services or by a similar program or services available through the Department of Corrections if the court imposes a sentence of one year or more or, if the court imposes a sentence of 12 months or less, by a similar program or services available through a local or regional jail, a local community-based probation services agency established pursuant to § 9.1-174, or an ASAP program certified by the Commission on VASAP.

B. The court trying the case of any person alleged to have committed any offense designated by this article or by the Drug Control Act (§ 54.1-3400 et seq.) or in any other criminal case in which the commission of the offense was motivated by or closely related to the use of drugs and determined by the court, pursuant to a substance abuse screening and assessment, to be in need of treatment for the use of drugs may commit, based upon a consideration of the substance abuse assessment, such person, upon his conviction, to any facility for the treatment of persons with substance abuse, licensed by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, if space is available in such facility, for a period of time not in excess of the maximum term of imprisonment specified as the penalty for conviction of such offense or, if sentence was determined by a jury, not in excess of the term of imprisonment as set by such jury. Confinement under such commitment shall be, in all regards, treated as confinement in a penal institution and the person so committed may be convicted of escape if he leaves the place of commitment without authority. A charge of escape may be prosecuted in either the jurisdiction where the treatment facility is located or the jurisdiction where the person was sentenced to commitment. The court may revoke such commitment at any time and transfer the person to an appropriate state or local correctional facility. Upon presentation of a certified statement from the director of the treatment facility to the effect that the confined person has successfully responded to treatment, the court may release such confined person prior to the termination of the period of time for which such person was confined and may suspend the remainder of the term upon such conditions as the court may prescribe.

C. The court trying a case in which commission of the offense was related to the defendant's habitual abuse of alcohol and in which the court determines, pursuant to a substance abuse screening and assessment, that such defendant is in need of treatment, may commit, based upon a consideration of the substance abuse assessment, such person, upon his conviction, to any facility for the treatment of persons with substance abuse licensed by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, if space is available in such facility, for a period of time not in excess of the maximum term of imprisonment specified as the penalty for conviction. Confinement under such commitment shall be, in all regards, treated as confinement in a penal institution and the person so committed may be convicted of escape if he leaves the place of commitment without authority. The court may revoke such commitment at any time and transfer the person to an appropriate state or local correctional facility. Upon presentation of a certified statement from the director of the treatment facility to the effect that the confined person has successfully responded to treatment, the court may release such confined person prior to the termination of the period of time for which such person was confined and may suspend the remainder of the term upon such conditions as the court may prescribe.

§ 18.2-254.1. Drug Treatment Court Act.

2642 A. This section shall be known and may be cited as the "Drug Treatment Court Act."

2643 B. The General Assembly recognizes that there is a critical need in the Commonwealth for effective  
2644 treatment programs that reduce the incidence of drug use, drug addiction, family separation due to  
2645 parental substance abuse, and drug-related crimes. It is the intent of the General Assembly by this  
2646 section to enhance public safety by facilitating the creation of drug treatment courts as means by which  
2647 to accomplish this purpose.

2648 C. The goals of drug treatment courts include: (i) reducing drug addiction and drug dependency  
2649 among offenders; (ii) reducing recidivism; (iii) reducing drug-related court workloads; (iv) increasing  
2650 personal, familial and societal accountability among offenders; and, (v) promoting effective planning and  
2651 use of resources among the criminal justice system and community agencies.

2652 D. Drug treatment courts are specialized court dockets within the existing structure of Virginia's court  
2653 system offering judicial monitoring of intensive treatment and strict supervision of addicts in drug and  
2654 drug-related cases. Local officials must complete a recognized planning process before establishing a  
2655 drug treatment court program.

2656 E. Administrative oversight for implementation of the Drug Treatment Court Act shall be conducted  
2657 by the Supreme Court of Virginia. The Supreme Court of Virginia shall be responsible for (i) providing  
2658 oversight for the distribution of funds for drug treatment courts; (ii) providing technical assistance to  
2659 drug treatment courts; (iii) providing training for judges who preside over drug treatment courts; (iv)  
2660 providing training to the providers of administrative, case management, and treatment services to drug  
2661 treatment courts; and (v) monitoring the completion of evaluations of the effectiveness and efficiency of  
2662 drug treatment courts in the Commonwealth.

2663 F. A state drug treatment court advisory committee shall be established to (i) evaluate and  
2664 recommend standards for the planning and implementation of drug treatment courts; (ii) assist in the  
2665 evaluation of their effectiveness and efficiency; and (iii) encourage and enhance cooperation among  
2666 agencies that participate in their planning and implementation. The committee shall be chaired by the  
2667 Chief Justice of the Supreme Court of Virginia or his designee and shall include a member of the  
2668 Judicial Conference of Virginia who presides over a drug treatment court; a district court judge; the  
2669 Executive Secretary or his designee; the directors of the following executive branch agencies:  
2670 Department of Corrections, Department of Criminal Justice Services, Department of Juvenile Justice,  
2671 Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services,  
2672 Department of Social Services; a representative of the following entities: a local community-based  
2673 probation and pretrial services agency, the Commonwealth's Attorney's Association, the Virginia Indigent  
2674 Defense Commission, the Circuit Court Clerk's Association, the Virginia Sheriff's Association, the  
2675 Virginia Association of Chiefs of Police, the Commission on VASAP, and two representatives  
2676 designated by the Virginia Drug Court Association.

2677 G. Each jurisdiction or combination of jurisdictions that intend to establish a drug treatment court or  
2678 continue the operation of an existing one shall establish a local drug treatment court advisory committee.  
2679 Jurisdictions that establish separate adult and juvenile drug treatment courts may establish an advisory  
2680 committee for each such court. Each advisory committee shall ensure quality, efficiency, and fairness in  
2681 the planning, implementation, and operation of the drug treatment court or courts that serve the  
2682 jurisdiction or combination of jurisdictions. Advisory committee membership shall include, but shall not  
2683 be limited to the following people or their designees: (i) the drug treatment court judge; (ii) the attorney  
2684 for the Commonwealth, or, where applicable, the city or county attorney who has responsibility for the  
2685 prosecution of misdemeanor offenses; (iii) the public defender or a member of the local criminal defense  
2686 bar in jurisdictions in which there is no public defender; (iv) the clerk of the court in which the drug  
2687 treatment court is located; (v) a representative of the Virginia Department of Corrections, or the  
2688 Department of Juvenile Justice, or both, from the local office which serves the jurisdiction or  
2689 combination of jurisdictions; (vi) a representative of a local community-based probation and pretrial  
2690 services agency; (vii) a local law-enforcement officer; (viii) a representative of the Department of Mental  
2691 Health, ~~Mental Retardation~~ *Intellectual Disability*, and Substance Abuse Services or a representative of  
2692 local drug treatment providers; (ix) the drug court administrator; (x) a representative of the Department  
2693 of Social Services; (xi) county administrator or city manager; and (xii) any other people selected by the  
2694 drug treatment court advisory committee.

2695 H. Each local drug treatment court advisory committee shall establish criteria for the eligibility and  
2696 participation of offenders who have been determined to be addicted to or dependent upon drugs. Subject  
2697 to the provisions of this section, neither the establishment of a drug treatment court nor anything herein  
2698 shall be construed as limiting the discretion of the attorney for the Commonwealth to prosecute any  
2699 criminal case arising therein which he deems advisable to prosecute, except to the extent the  
2700 participating attorney for the Commonwealth agrees to do so. As defined in § 17.1-805 or 19.2-297.1,  
2701 adult offenders who have been convicted of a violent criminal offense within the preceding 10 years, or  
2702 juvenile offenders who previously have been adjudicated not innocent of any such offense within the  
2703 preceding 10 years, shall not be eligible for participation in any drug treatment court established or

continued in operation pursuant to this section.

I. Each drug treatment court advisory committee shall establish policies and procedures for the operation of the court to attain the following goals: (i) effective integration of drug and alcohol treatment services with criminal justice system case processing; (ii) enhanced public safety through intensive offender supervision and drug treatment; (iii) prompt identification and placement of eligible participants; (iv) efficient access to a continuum of alcohol, drug, and related treatment and rehabilitation services; (v) verified participant abstinence through frequent alcohol and other drug testing; (vi) prompt response to participants' noncompliance with program requirements through a coordinated strategy; (vii) ongoing judicial interaction with each drug court participant; (viii) ongoing monitoring and evaluation of program effectiveness and efficiency; (ix) ongoing interdisciplinary education and training in support of program effectiveness and efficiency; and (x) ongoing collaboration among drug treatment courts, public agencies, and community-based organizations to enhance program effectiveness and efficiency.

J. Participation by an offender in a drug treatment court shall be voluntary and made pursuant only to a written agreement entered into by and between the offender and the Commonwealth with the concurrence of the court.

K. Nothing in this section shall preclude the establishment of substance abuse treatment programs and services pursuant to the deferred judgment provisions of § 18.2-251.

L. Each offender shall contribute to the cost of the substance abuse treatment he receives while participating in a drug treatment court pursuant to guidelines developed by the drug treatment court advisory committee.

M. Nothing contained in this section shall confer a right or an expectation of a right to treatment for an offender or be construed as requiring a local drug treatment court advisory committee to accept for participation every offender.

N. The Office of the Executive Secretary shall, with the assistance of the state drug treatment court advisory committee, develop a statewide evaluation model and conduct ongoing evaluations of the effectiveness and efficiency of all local drug treatment courts. A report of these evaluations shall be submitted to the General Assembly by December 1 of each year. Each local drug treatment court advisory committee shall submit evaluative reports to the Office of the Executive Secretary as requested.

O. Notwithstanding any other provision of this section, no drug treatment court shall be established subsequent to March 1, 2004, unless the jurisdiction or jurisdictions intending or proposing to establish such court have been specifically granted permission under the Code of Virginia to establish such court. The provisions of this subsection shall not apply to any drug treatment court established on or before March 1, 2004, and operational as of July 1, 2004.

P. Subject to the requirements and conditions established by the state Drug Treatment Court Advisory Committee, there shall be established a drug treatment court in the following jurisdictions: the City of Chesapeake and the City of Newport News.

§ 18.2-258.1. Obtaining drugs, procuring administration of controlled substances, etc., by fraud, deceit or forgery.

A. It shall be unlawful for any person to obtain or attempt to obtain any drug or procure or attempt to procure the administration of any controlled substance or marijuana: (i) by fraud, deceit, misrepresentation, embezzlement, or subterfuge; or (ii) by the forgery or alteration of a prescription or of any written order; or (iii) by the concealment of a material fact; or (iv) by the use of a false name or the giving of a false address.

B. It shall be unlawful for any person to furnish false or fraudulent information in or omit any information from, or willfully make a false statement in, any prescription, order, report, record, or other document required by Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1.

C. It shall be unlawful for any person to use in the course of the manufacture or distribution of a controlled substance or marijuana a license number which is fictitious, revoked, suspended, or issued to another person.

D. It shall be unlawful for any person, for the purpose of obtaining any controlled substance or marijuana, to falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian or other authorized person.

E. It shall be unlawful for any person to make or utter any false or forged prescription or false or forged written order.

F. It shall be unlawful for any person to affix any false or forged label to a package or receptacle containing any controlled substance.

G. This section shall not apply to officers and employees of the United States, of this Commonwealth or of a political subdivision of this Commonwealth acting in the course of their employment, who obtain such drugs for investigative, research or analytical purposes, or to the agents or duly authorized representatives of any pharmaceutical manufacturer who obtain such drugs for investigative, research or analytical purposes and who are acting in the course of their employment;

2765 provided that such manufacturer is licensed under the provisions of the Federal Food, Drug and  
2766 Cosmetic Act; and provided further, that such pharmaceutical manufacturer, its agents and duly  
2767 authorized representatives file with the Board such information as the Board may deem appropriate.

2768 H. Except as otherwise provided in this subsection, any person who shall violate any provision herein  
2769 shall be guilty of a Class 6 felony.

2770 Whenever any person who has not previously been convicted of any offense under this article or  
2771 under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant,  
2772 depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of  
2773 such an offense dismissed, or reduced as provided in this section, pleads guilty to or enters a plea of not  
2774 guilty to the court for violating this section, upon such plea if the facts found by the court would justify  
2775 a finding of guilt, the court may place him on probation upon terms and conditions.

2776 As a term or condition, the court shall require the accused to be evaluated and enter a treatment  
2777 and/or education program, if available, such as, in the opinion of the court, may be best suited to the  
2778 needs of the accused. This program may be located in the judicial circuit in which the charge is brought  
2779 or in any other judicial circuit as the court may provide. The services shall be provided by a program  
2780 certified or licensed by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and  
2781 Substance Abuse Services. The court shall require the person entering such program under the provisions  
2782 of this section to pay all or part of the costs of the program, including the costs of the screening,  
2783 evaluation, testing and education, based upon the person's ability to pay unless the person is determined  
2784 by the court to be indigent.

2785 As a condition of supervised probation, the court shall require the accused to remain drug free during  
2786 the period of probation and submit to such tests during that period as may be necessary and appropriate  
2787 to determine if the accused is drug free. Such testing may be conducted by the personnel of any  
2788 screening, evaluation, and education program to which the person is referred or by the supervising  
2789 agency.

2790 Unless the accused was fingerprinted at the time of arrest, the court shall order the accused to report  
2791 to the original arresting law-enforcement agency to submit to fingerprinting.

2792 Upon violation of a term or condition, the court may enter an adjudication of guilt upon the felony  
2793 and proceed as otherwise provided. Upon fulfillment of the terms and conditions of probation, the court  
2794 shall find the defendant guilty of a Class 1 misdemeanor.

2795 § 18.2-271.2. Commission on VASAP; purpose; membership; terms; meetings; staffing; compensation  
2796 and expenses; chairman's executive summary.

2797 A. There is hereby established in the legislative branch of state government the Commission on the  
2798 Virginia Alcohol Safety Action Program (VASAP). The Commission shall administer and supervise the  
2799 state system of local alcohol and safety action programs, develop and maintain operation and  
2800 performance standards for local alcohol and safety action programs, and allocate funding to such  
2801 programs. The Commission shall have a total membership of 15 members that shall consist of six  
2802 legislative members and nine nonlegislative citizen members. Members shall be appointed as follows:  
2803 four current or former members of the House Committee for Courts of Justice, to be appointed by the  
2804 Speaker of the House of Delegates; two members of the Senate Committee for Courts of Justice, to be  
2805 appointed by the Senate Committee on Rules; three sitting or retired judges, one each from the circuit,  
2806 general district and juvenile and domestic relations district courts, who regularly hear or heard cases  
2807 involving driving under the influence and are familiar with their local alcohol safety action programs, to  
2808 be appointed by the Chairman of the Committee on District Courts; two directors of local alcohol safety  
2809 action programs, to be appointed by the legislative members of the Commission; one representative from  
2810 the law-enforcement profession, to be appointed by the Speaker of the House and one nonlegislative  
2811 citizen at large, to be appointed by the Senate Committee on Rules; one representative from the Virginia  
2812 Department of Motor Vehicles whose duties are substantially related to matters to be addressed by the  
2813 Commission to be appointed by the Commissioner of the Department of Motor Vehicles, and one  
2814 representative from the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and  
2815 Substance Abuse Services whose duties also substantially involve such matters, to be appointed by the  
2816 Commissioner of the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and  
2817 Substance Abuse Services. Legislative members shall serve terms coincident with their terms of office.  
2818 In accordance with the staggered terms previously established, nonlegislative citizen members shall serve  
2819 two-year terms. All members may be reappointed. Appointments to fill vacancies, other than by  
2820 expiration of a term, shall be made for the unexpired terms. Any appointment to fill a vacancy shall be  
2821 made in the same manner as the original appointment.

2822 B. The Commission shall meet at least four times each year at such places as it may from time to  
2823 time designate. A majority of the members shall constitute a quorum. The Commission shall elect a  
2824 chairman and vice-chairman from among its membership.

2825 The Commission shall be empowered to establish and ensure the maintenance of minimum standards  
2826 and criteria for program operations and performance, accounting, auditing, public information and

administrative procedures for the various local alcohol safety action programs and shall be responsible for overseeing the administration of the statewide VASAP system. Such programs shall be certified by the Commission in accordance with procedures set forth in the Commission on VASAP Certification Manual. The Commission shall also oversee program plans, operations and performance and a system for allocating funds to cover deficits that may occur in the budgets of local programs.

C. The Commission shall appoint and employ and, at its pleasure, remove an executive director and such other persons as it may deem necessary, and determine their duties and fix their salaries or compensation.

D. The Commission shall appoint a Virginia Alcohol Safety Action Program Advisory Board to make recommendations to the Commission regarding its duties and administrative functions. The membership of such Board shall be appointed in the discretion of the Commission and include personnel from (i) local safety action programs, (ii) state or local boards of mental health and ~~mental retardation~~ *intellectual disabilities* and (iii) other community mental health services organizations. An assistant attorney general who provides counsel in matters relating to driving under the influence shall also be appointed to the Board.

E. Legislative members of the Commission shall receive compensation as provided in § 30-19.12. Funding for the costs of compensation of legislative members shall be provided by the Commission. All members shall be reimbursed for all reasonable and necessary expenses as provided in §§ 2.2-2813 and 2.2-2825 to be paid out of that portion of moneys paid in VASAP defendant entry fees which is forwarded to the Virginia Alcohol Safety Action Program.

F. The chairman of the Commission shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Commission no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

§ 18.2-308.1:1. Possession or transportation of firearms by persons acquitted by reason of insanity; penalty; permit.

A. It shall be unlawful for any person acquitted by reason of insanity and committed to the custody of the Commissioner of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, pursuant to Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2, on a charge of treason, any felony or any offense punishable as a misdemeanor under Title 54.1 or a Class 1 or Class 2 misdemeanor under this title, except those misdemeanor violations of (i) Article 2 (§ 18.2-266 et seq.) of Chapter 7 of this title, (ii) Article 2 (§ 18.2-415 et seq.) of Chapter 9 of this title, or (iii) § 18.2-119, or (iv) an ordinance of any county, city, or town similar to the offenses specified in (i), (ii), or (iii), to knowingly and intentionally possess or transport any firearm. A violation of this section shall be punishable as a Class 1 misdemeanor.

B. Any person so acquitted may, upon discharge from the custody of the Commissioner, petition the circuit court in which he resides for a permit to possess or carry a firearm. The court may, in its discretion and for good cause shown, grant the petition and issue a permit, in which event the provisions of subsection A do not apply.

§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain firearms.

A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a form to be provided by the Department of State Police, to have the dealer obtain criminal history record information. Such form shall include only the written consent; the name, birth date, gender, race, citizenship, and social security number and/or any other identification number; the number of firearms by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the following questions: (i) has the applicant been convicted of a felony offense or found guilty or adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent act that would be a felony if committed by an adult and (ii) is the applicant subject to a court order restraining the applicant from harassing, stalking, or threatening the applicant's child or intimate partner, or a child of such partner, or is the applicant subject to a protective order.

B. 1. No dealer shall sell, rent, trade or transfer from his inventory any such firearm to any other person who is a resident of Virginia until he has (i) obtained written consent and the other information on the consent form specified in subsection A, and provided the Department of State Police with the name, birth date, gender, race, citizenship, and social security and/or any other identification number and the number of firearms by category intended to be sold, rented, traded or transferred and (ii) requested criminal history record information by a telephone call to or other communication authorized by the State Police and is authorized by subdivision 2 of this subsection to complete the sale or other such transfer. To establish personal identification and residence in Virginia for purposes of this section, a dealer must require any prospective purchaser to present one photo-identification form issued by a governmental agency of the Commonwealth or by the United States Department of Defense, and other

documentation of residence. Except where the photo-identification was issued by the United States Department of Defense, the other documentation of residence shall show an address identical to that shown on the photo-identification form, such as evidence of currently paid personal property tax or real estate tax, or a current (a) lease, (b) utility or telephone bill, (c) voter registration card, (d) bank check, (e) passport, (f) automobile registration, or (g) hunting or fishing license; other current identification allowed as evidence of residency by Part 178.124 of Title 27 of the Code of Federal Regulations and ATF Ruling 2001-5; or other documentation of residence determined to be acceptable by the Department of Criminal Justice Services, that corroborates that the prospective purchaser currently resides in Virginia. Where the photo-identification was issued by the Department of Defense, permanent orders assigning the purchaser to a duty post in Virginia shall be the only other required documentation of residence. For the purposes of this section and establishment of residency for firearm purchase, residency shall be deemed to be the permanent duty post of a member of the armed forces. When the photo-identification presented to a dealer by the prospective purchaser is a driver's license or other photo-identification issued by the Department of Motor Vehicles, and such identification form contains a date of issue, the dealer shall not, except for a renewed driver's license or other photo-identification issued by the Department of Motor Vehicles, sell or otherwise transfer a firearm to the prospective purchaser until 30 days after the date of issue of an original or duplicate driver's license unless the prospective purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record showing that the original date of issue of the driver's license was more than 30 days prior to the attempted purchase.

In addition, no dealer shall sell, rent, trade or transfer from his inventory any assault firearm to any person who is not a citizen of the United States or who is not a person lawfully admitted for permanent residence. To establish citizenship or lawful admission for a permanent residence for purposes of purchasing an assault firearm, a dealer shall require a prospective purchaser to present a certified birth certificate or a certificate of birth abroad issued by the United States State Department, a certificate of citizenship or a certificate of naturalization issued by the United States Citizenship and Immigration Services, an unexpired U.S. passport, a United States citizen identification card, a current voter registration card, a current selective service registration card, or an immigrant visa or other documentation of status as a person lawfully admitted for permanent residence issued by the United States Citizenship and Immigration Services.

Upon receipt of the request for a criminal history record information check, the State Police shall (1) review its criminal history record information to determine if the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law, (2) inform the dealer if its record indicates that the buyer or transferee is so prohibited, and (3) provide the dealer with a unique reference number for that inquiry.

2. The State Police shall provide its response to the requesting dealer during the dealer's request, or by return call without delay. If the criminal history record information check indicates the prospective purchaser or transferee has a disqualifying criminal record or has been acquitted by reason of insanity and committed to the custody of the Commissioner of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, the State Police shall have until the end of the dealer's next business day to advise the dealer if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law. If not so advised by the end of the dealer's next business day, a dealer who has fulfilled the requirements of subdivision 1 of this subsection may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer. In case of electronic failure or other circumstances beyond the control of the State Police, the dealer shall be advised immediately of the reason for such delay and be given an estimate of the length of such delay. After such notification, the State Police shall, as soon as possible but in no event later than the end of the dealer's next business day, inform the requesting dealer if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law. A dealer who fulfills the requirements of subdivision 1 of this subsection and is told by the State Police that a response will not be available by the end of the dealer's next business day may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer.

3. Except as required by subsection D of § 9.1-132, the State Police shall not maintain records longer than 30 days, except for multiple handgun transactions for which records shall be maintained for 12 months, from any dealer's request for a criminal history record information check pertaining to a buyer or transferee who is not found to be prohibited from possessing and transporting a firearm under state or federal law. However, the log on requests made may be maintained for a period of 12 months, and such log shall consist of the name of the purchaser, the dealer identification number, the unique approval number and the transaction date.

4. On the last day of the week following the sale or transfer of any firearm, the dealer shall mail or deliver the written consent form required by subsection A to the Department of State Police. The State



Police shall immediately initiate a search of all available criminal history record information to determine if the purchaser is prohibited from possessing or transporting a firearm under state or federal law. If the search discloses information indicating that the buyer or transferee is so prohibited from possessing or transporting a firearm, the State Police shall inform the chief law-enforcement officer in the jurisdiction where the sale or transfer occurred and the dealer without delay.

5. Notwithstanding any other provisions of this section, rifles and shotguns may be purchased by persons who are citizens of the United States or persons lawfully admitted for permanent residence but residents of other states under the terms of subsections A and B upon furnishing the dealer with proof of citizenship or status as a person lawfully admitted for permanent residence and one photo-identification form issued by a governmental agency of the person's state of residence and one other form of identification determined to be acceptable by the Department of Criminal Justice Services.

6. For the purposes of this subsection, the phrase "dealer's next business day" shall not include December 25.

C. No dealer shall sell, rent, trade or transfer from his inventory any firearm, except when the transaction involves a rifle or a shotgun and can be accomplished pursuant to the provisions of subdivision B 5 to any person who is not a resident of Virginia unless he has first obtained from the Department of State Police a report indicating that a search of all available criminal history record information has not disclosed that the person is prohibited from possessing or transporting a firearm under state or federal law. The dealer shall obtain the required report by mailing or delivering the written consent form required under subsection A to the State Police within 24 hours of its execution. If the dealer has complied with the provisions of this subsection and has not received the required report from the State Police within 10 days from the date the written consent form was mailed to the Department of State Police, he shall not be deemed in violation of this section for thereafter completing the sale or transfer.

D. Nothing herein shall prevent a resident of the Commonwealth, at his option, from buying, renting or receiving a firearm from a dealer in Virginia by obtaining a criminal history record information check through the dealer as provided in subsection C.

E. If any buyer or transferee is denied the right to purchase a firearm under this section, he may exercise his right of access to and review and correction of criminal history record information under § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within 30 days of such denial.

F. Any dealer who willfully and intentionally requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate criminal history record information except as authorized in this section shall be guilty of a Class 2 misdemeanor.

G. For purposes of this section:

"Actual buyer" means a person who executes the consent form required in subsection B or C, or other such firearm transaction records as may be required by federal law.

"Antique firearm" means:

1. Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898;

2. Any replica of any firearm described in subdivision 1 of this definition if such replica (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (ii) uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade;

3. Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol that is designed to use black powder, or a black powder substitute, and that cannot use fixed ammunition. For purposes of this subdivision, the term "antique firearm" shall not include any weapon that incorporates a firearm frame or receiver, any firearm that is converted into a muzzle-loading weapon, or any muzzle-loading weapon that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breech-block, or any combination thereof; or

4. Any curio or relic as defined in this subsection.

"Assault firearm" means any semi-automatic center-fire rifle or pistol which expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock.

"Curios or relics" means firearms that are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms must fall within one of the following categories:

1. Firearms that were manufactured at least 50 years prior to the current date, which use rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is

not readily available in the ordinary channels of commercial trade, but not including replicas thereof;

2. Firearms that are certified by the curator of a municipal, state, or federal museum that exhibits firearms to be curios or relics of museum interest; and

3. Any other firearms that derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event. Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collectors' items, or that the value of like firearms available in ordinary commercial channels is substantially less.

"Dealer" means any person licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

"Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be converted to expel single or multiple projectiles by action of an explosion of a combustible material.

"Handgun" means any pistol or revolver or other firearm originally designed, made and intended to fire single or multiple projectiles by means of an explosion of a combustible material from one or more barrels when held in one hand.

"Lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

H. The Department of Criminal Justice Services shall promulgate regulations to ensure the identity, confidentiality and security of all records and data provided by the Department of State Police pursuant to this section.

I. The provisions of this section shall not apply to (i) transactions between persons who are licensed as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq.; (ii) purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth or any local government; or (iii) antique firearms, curios or relics.

J. The provisions of this section shall not apply to restrict purchase, trade or transfer of firearms by a resident of Virginia when the resident of Virginia makes such purchase, trade or transfer in another state, in which case the laws and regulations of that state and the United States governing the purchase, trade or transfer of firearms shall apply. A National Instant Criminal Background Check System (NICS) check shall be performed prior to such purchase, trade or transfer of firearms.

J1. All licensed firearms dealers shall collect a fee of \$2 for every transaction for which a criminal history record information check is required pursuant to this section, except that a fee of \$5 shall be collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the Department of State Police by the last day of the month following the sale for deposit in a special fund for use by the State Police to offset the cost of conducting criminal history record information checks under the provisions of this section.

K. Any person willfully and intentionally making a materially false statement on the consent form required in subsection B or C or on such firearm transaction records as may be required by federal law, shall be guilty of a Class 5 felony.

L. Except as provided in § 18.2-308.2:1, any dealer who willfully and intentionally sells, rents, trades or transfers a firearm in violation of this section shall be guilty of a Class 6 felony.

L1. Any person who attempts to solicit, persuade, encourage, or entice any dealer to transfer or otherwise convey a firearm other than to the actual buyer, as well as any other person who willfully and intentionally aids or abets such person, shall be guilty of a Class 6 felony. This subsection shall not apply to a federal law-enforcement officer or a law-enforcement officer as defined in § 9.1-101, in the performance of his official duties, or other person under his direct supervision.

M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the Commonwealth to be resold or otherwise provided to another person who the transferor knows is ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 5 felony. However, if the violation of this subsection involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory minimum term of imprisonment of five years.

N. Any person who is ineligible to purchase or otherwise receive or possess a firearm in the Commonwealth who solicits, employs or assists any person in violating subsection M shall be guilty of a Class 5 felony and shall be sentenced to a mandatory minimum term of imprisonment of five years.

O. All driver's licenses issued on or after July 1, 1994, shall carry a letter designation indicating whether the driver's license is an original, duplicate or renewed driver's license.

P. Except as provided in subdivisions 1, 2 and 3 of this subsection, it shall be unlawful for any person who is not a licensed firearms dealer to purchase more than one handgun within any 30-day period. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

1. Purchases in excess of one handgun within a 30-day period may be made upon completion of an enhanced background check, as described herein, by special application to the Department of State

Police listing the number and type of handguns to be purchased and transferred for lawful business or personal use, in a collector series, for collections, as a bulk purchase from estate sales and for similar purposes. Such applications shall be signed under oath by the applicant on forms provided by the Department of State Police, shall state the purpose for the purchase above the limit, and shall require satisfactory proof of residency and identity. Such application shall be in addition to the firearms sales report required by the Bureau of Alcohol, Tobacco and Firearms (ATF). The Superintendent of State Police shall promulgate regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the implementation of an application process for purchases of handguns above the limit.

Upon being satisfied that these requirements have been met, the Department of State Police shall forthwith issue to the applicant a nontransferable certificate, which shall be valid for seven days from the date of issue. The certificate shall be surrendered to the dealer by the prospective purchaser prior to the consummation of such sale and shall be kept on file at the dealer's place of business for inspection as provided in § 54.1-4201 for a period of not less than two years. Upon request of any local law-enforcement agency, and pursuant to its regulations, the Department of State Police may certify such local law-enforcement agency to serve as its agent to receive applications and, upon authorization by the Department of State Police, issue certificates forthwith pursuant to this subsection. Applications and certificates issued under this subsection shall be maintained as records as provided in subdivision B 3. The Department of State Police shall make available to local law-enforcement agencies all records concerning certificates issued pursuant to this subsection and all records provided for in subdivision B 3.

2. The provisions of this subsection shall not apply to:

- a. A law-enforcement agency;
- b. An agency duly authorized to perform law-enforcement duties;
- c. State and local correctional facilities;
- d. A private security company licensed to do business within the Commonwealth;
- e. The purchase of antique firearms as herein defined;
- f. A person whose handgun is stolen or irretrievably lost who deems it essential that such handgun be replaced immediately. Such person may purchase another handgun, even if the person has previously purchased a handgun within a 30-day period, provided (i) the person provides the firearms dealer with a copy of the official police report or a summary thereof, on forms provided by the Department of State Police, from the law-enforcement agency that took the report of the lost or stolen handgun; (ii) the official police report or summary thereof contains the name and address of the handgun owner, the description of the handgun, the location of the loss or theft, the date of the loss or theft, and the date the loss or theft was reported to the law-enforcement agency; and (iii) the date of the loss or theft as reflected on the official police report or summary thereof occurred within 30 days of the person's attempt to replace the handgun. The firearms dealer shall attach a copy of the official police report or summary thereof to the original copy of the Virginia firearms transaction report completed for the transaction and retain it for the period prescribed by the Department of State Police;

g. A person who trades in a handgun at the same time he makes a handgun purchase and as a part of the same transaction, provided that no more than one transaction of this nature is completed per day;

h. A person who holds a valid Virginia permit to carry a concealed handgun;

i. A person who purchases a handgun in a private sale. For purposes of this subdivision, a private sale means purchase from a person who makes occasional sales, exchanges or purchases of firearms for the enhancement of a personal collection of curios or relics as herein defined, or who sells all or part of such collection of curios and relics; or

j. A law-enforcement officer. For purposes of this subdivision, a law-enforcement officer means any employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth.

3. For the purposes of this subsection, "purchase" shall not include the exchange or replacement of a handgun by a seller for a handgun purchased from such seller by the same person seeking the exchange or replacement within the 30-day period immediately preceding the date of exchange or replacement.

§ 18.2-369. Abuse and neglect of incapacitated adults; penalty.

A. It shall be unlawful for any responsible person to abuse or neglect any incapacitated adult as defined in this section. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect does not result in serious bodily injury or disease to the incapacitated adult is guilty of a Class 1 misdemeanor. Any responsible person who is convicted of a second or subsequent offense under this subsection is guilty of a Class 6 felony.

B. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in serious bodily injury or disease to the incapacitated adult is guilty of a Class 4 felony. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in the death of the incapacitated adult is guilty of a Class 3

3134 felony.

3135 C. For purposes of this section:

3136 "Abuse" means (i) knowing and willful conduct that causes physical injury or pain or (ii) knowing  
3137 and willful use of physical restraint, including confinement, as punishment, for convenience or as a  
3138 substitute for treatment, except where such conduct or physical restraint, including confinement, is a part  
3139 of care or treatment and is in furtherance of the health and safety of the incapacitated person.

3140 "Incapacitated adult" means any person 18 years or older who is impaired by reason of mental  
3141 illness; ~~mental retardation~~, physical illness or disability, *intellectual disability*, advanced age or other  
3142 causes to the extent the adult lacks sufficient understanding or capacity to make, communicate or carry  
3143 out reasonable decisions concerning his well-being.

3144 "Neglect" means the knowing and willful failure by a responsible person to provide treatment, care,  
3145 goods or services which results in injury to the health or endangers the safety of an incapacitated adult.

3146 "Responsible person" means a person who has responsibility for the care, custody or control of an  
3147 incapacitated person by operation of law or who has assumed such responsibility voluntarily, by contract  
3148 or in fact.

3149 "Serious bodily injury or disease" shall include but not be limited to (i) disfigurement, (ii) a fracture,  
3150 (iii) a severe burn or laceration, (iv) mutilation, (v) maiming, or (vi) life-threatening internal injuries or  
3151 conditions, whether or not caused by trauma.

3152 D. No responsible person shall be in violation of this section whose conduct was (i) in accordance  
3153 with the informed consent of the incapacitated person or a person authorized to consent on his behalf;  
3154 (ii) in accordance with a declaration by the incapacitated person under the Natural Death Act of Virginia  
3155 (§ 54.1-2981 et seq.) or with the provisions of a valid medical power of attorney; (iii) in accordance  
3156 with the wishes of the incapacitated person or a person authorized to consent on behalf of the  
3157 incapacitated person and in accord with the tenets and practices of a church or religious denomination;  
3158 (iv) incident to necessary movement of, placement of or protection from harm to the incapacitated  
3159 person; or (v) a bona fide, recognized or approved practice to provide medical care.

3160 § 19.2-123. Release of accused on secured or unsecured bond or promise to appear; conditions of  
3161 release.

3162 A. Any person arrested for a felony who has previously been convicted of a felony, or who is  
3163 presently on bond for an unrelated arrest in any jurisdiction, or who is on probation or parole, may be  
3164 released only upon a secure bond. This provision may be waived with the approval of the judicial  
3165 officer and with the concurrence of the attorney for the Commonwealth or the attorney for the county,  
3166 city or town. Subject to the foregoing, when a person is arrested for either a felony or a misdemeanor,  
3167 any judicial officer may impose any one or any combination of the following conditions of release:

3168 1. Place the person in the custody and supervision of a designated person, organization or pretrial  
3169 services agency which, for the purposes of this section, shall not include a court services unit established  
3170 pursuant to § 16.1-233;

3171 2. Place restrictions on the travel, association or place of abode of the person during the period of  
3172 release and restrict contacts with household members for a period not to exceed seventy-two hours;

3173 2a. Require the execution of an unsecured bond;

3174 3. Require the execution of a secure bond which at the option of the accused shall be satisfied with  
3175 sufficient solvent sureties, or the deposit of cash in lieu thereof. Only the actual value of any interest in  
3176 real estate or personal property owned by the proposed surety shall be considered in determining  
3177 solvency and solvency shall be found if the value of the proposed surety's equity in the real estate or  
3178 personal property equals or exceeds the amount of the bond;

3179 3a. Require that the person do any or all of the following: (i) maintain employment or, if  
3180 unemployed, actively seek employment; (ii) maintain or commence an educational program; (iii) avoid  
3181 all contact with an alleged victim of the crime and with any potential witness who may testify  
3182 concerning the offense; (iv) comply with a specified curfew; (v) refrain from possessing a firearm,  
3183 destructive device, or other dangerous weapon; (vi) refrain from excessive use of alcohol, or use of any  
3184 illegal drug or any controlled substance not prescribed by a health care provider; and (vii) submit to  
3185 testing for drugs and alcohol until the final disposition of his case; or

3186 4. Impose any other condition deemed reasonably necessary to assure appearance as required, and to  
3187 assure his good behavior pending trial, including a condition requiring that the person return to custody  
3188 after specified hours or be placed on home electronic incarceration pursuant to § 53.1-131.2.

3189 Upon satisfaction of the terms of recognizance, the accused shall be released forthwith.

3190 In addition, where the accused is a resident of a state training center for the ~~mentally~~  
3191 ~~retarded~~ *intellectually disabled*, the judicial officer may place the person in the custody of the director of  
3192 the state facility, if the director agrees to accept custody. Such director is hereby authorized to take  
3193 custody of such person and to maintain him at the training center prior to a trial or hearing under such  
3194 circumstances as will reasonably assure the appearance of the accused for the trial or hearing.

3195 B. In any jurisdiction served by a pretrial services agency which offers a drug or alcohol screening

or testing program approved for the purposes of this subsection by the chief general district court judge, any such person charged with a crime may be requested by such agency to give voluntarily a urine sample, submit to a drug or alcohol screening, or take a breath test for presence of alcohol. A sample may be analyzed for the presence of phencyclidine (PCP), barbiturates, cocaine, opiates or such other drugs as the agency may deem appropriate prior to any hearing to establish bail. The judicial officer and agency shall inform the accused or juvenile being screened or tested that test results shall be used by a judicial officer only at a bail hearing and only to determine appropriate conditions of release or to reconsider the conditions of bail at a subsequent hearing. All screening or test results, and any pretrial investigation report containing the screening or test results, shall be confidential with access thereto limited to judicial officers, the attorney for the Commonwealth, defense counsel, other pretrial service agencies, any criminal justice agency as defined in § 9.1-101 and, in cases where a juvenile is screened or tested, the parents or legal guardian or custodian of such juvenile. However, in no event shall the judicial officer have access to any screening or test result prior to making a bail release determination or to determining the amount of bond, if any. Following this determination, the judicial officer shall consider the screening or test results and the screening or testing agency's report and accompanying recommendations, if any, in setting appropriate conditions of release. In no event shall a decision regarding a release determination be subject to reversal on the sole basis of such screening or test results. Any accused or juvenile whose urine sample has tested positive for such drugs and who is admitted to bail may, as a condition of release, be ordered to refrain from use of alcohol or illegal drugs and may be required to be tested on a periodic basis until final disposition of his case to ensure his compliance with the order. Sanctions for a violation of any condition of release, which violations shall include subsequent positive drug or alcohol test results or failure to report as ordered for testing, may be imposed in the discretion of the judicial officer and may include imposition of more stringent conditions of release, contempt of court proceedings or revocation of release. Any test given under the provisions of this subsection which yields a positive drug or alcohol test result shall be reconfirmed by a second test if the person tested denies or contests the initial drug or alcohol test positive result. The results of any drug or alcohol test conducted pursuant to this subsection shall not be admissible in any judicial proceeding other than for the imposition of sanctions for a violation of a condition of release.

C. —Repealed.]

D. Nothing in this section shall be construed to prevent an officer taking a juvenile into custody from releasing that juvenile pursuant to § 16.1-247. If any condition of release imposed under the provisions of this section is violated, a judicial officer may issue a *capias* or order to show cause why the recognizance should not be revoked.

§ 19.2-169.1. Raising question of competency to stand trial or plead; evaluation and determination of competency.

A. Raising competency issue; appointment of evaluators. - If, at any time after the attorney for the defendant has been retained or appointed and before the end of trial, the court finds, upon hearing evidence or representations of counsel for the defendant or the attorney for the Commonwealth, that there is probable cause to believe that the defendant, whether a juvenile transferred pursuant to § 16.1-269.1 or adult, lacks substantial capacity to understand the proceedings against him or to assist his attorney in his own defense, the court shall order that a competency evaluation be performed by at least one psychiatrist or clinical psychologist who is qualified by training and experience in forensic evaluation.

B. Location of evaluation. - The evaluation shall be performed on an outpatient basis at a mental health facility or in jail unless the court specifically finds that outpatient evaluation services are unavailable or unless the results of outpatient evaluation indicate that hospitalization of the defendant for evaluation on competency is necessary. If the court finds that hospitalization is necessary, the court, under authority of this subsection, may order the defendant sent to a hospital designated by the Commissioner of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services as appropriate for evaluations of persons under criminal charge. The defendant shall be hospitalized for such time as the director of the hospital deems necessary to perform an adequate evaluation of the defendant's competency, but not to exceed 30 days from the date of admission to the hospital.

C. Provision of information to evaluators. - The court shall require the attorney for the Commonwealth to provide to the evaluators appointed under subsection A any information relevant to the evaluation, including, but not limited to (i) a copy of the warrant or indictment; (ii) the names and addresses of the attorney for the Commonwealth, the attorney for the defendant, and the judge ordering the evaluation; (iii) information about the alleged crime; and (iv) a summary of the reasons for the evaluation request. The court shall require the attorney for the defendant to provide any available psychiatric records and other information that is deemed relevant. The court shall require that information be provided to the evaluator within 96 hours of the issuance of the court order pursuant to this section.

3257 D. The competency report. - Upon completion of the evaluation, the evaluators shall promptly submit  
3258 a report in writing to the court and the attorneys of record concerning (i) the defendant's capacity to  
3259 understand the proceedings against him; (ii) his ability to assist his attorney; and (iii) his need for  
3260 treatment in the event he is found incompetent but restorable, or incompetent for the foreseeable future.  
3261 No statements of the defendant relating to the time period of the alleged offense shall be included in the  
3262 report.

3263 E. The competency determination. - After receiving the report described in subsection D, the court  
3264 shall promptly determine whether the defendant is competent to stand trial. A hearing on the defendant's  
3265 competency is not required unless one is requested by the attorney for the Commonwealth or the  
3266 attorney for the defendant, or unless the court has reasonable cause to believe the defendant will be  
3267 hospitalized under § 19.2-169.2. If a hearing is held, the party alleging that the defendant is incompetent  
3268 shall bear the burden of proving by a preponderance of the evidence the defendant's incompetency. The  
3269 defendant shall have the right to notice of the hearing, the right to counsel at the hearing and the right  
3270 to personally participate in and introduce evidence at the hearing.

3271 The fact that the defendant claims to be unable to remember the time period surrounding the alleged  
3272 offense shall not, by itself, bar a finding of competency if the defendant otherwise understands the  
3273 charges against him and can assist in his defense. Nor shall the fact that the defendant is under the  
3274 influence of medication bar a finding of competency if the defendant is able to understand the charges  
3275 against him and assist in his defense while medicated.

3276 § 19.2-169.2. Disposition when defendant found incompetent.

3277 A. Upon finding pursuant to subsection E of § 19.2-169.1 that the defendant, including a juvenile  
3278 transferred pursuant to § 16.1-269.1, is incompetent, the court shall order that the defendant receive  
3279 treatment to restore his competency on an outpatient basis or, if the court specifically finds that the  
3280 defendant requires inpatient hospital treatment, at a hospital designated by the Commissioner of Mental  
3281 Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services as appropriate for  
3282 treatment of persons under criminal charge. Any reports submitted pursuant to subsection D of  
3283 § 19.2-169.1 shall be made available to the director of the community services board or behavioral  
3284 health authority or his designee or to the director of the treating inpatient facility or his designee.

3285 B. If, at any time after the defendant is ordered to undergo treatment under subsection A of this  
3286 section, the director of the community services board or behavioral health authority or his designee or  
3287 the director of the treating inpatient facility or his designee believes the defendant's competency is  
3288 restored, the director or his designee shall immediately send a report to the court as prescribed in  
3289 subsection D of § 19.2-169.1. The court shall make a ruling on the defendant's competency according to  
3290 the procedures specified in subsection E of § 19.2-169.1.

3291 § 19.2-169.3. Disposition of the unrestorably incompetent defendant; capital murder charge; referral  
3292 to Commitment Review Committee.

3293 A. If, at any time after the defendant is ordered to undergo treatment pursuant to subsection A of  
3294 § 19.2-169.2, the director of the community services board or behavioral health authority or his designee  
3295 or the director of the treating inpatient facility or his designee concludes that the defendant is likely to  
3296 remain incompetent for the foreseeable future, he shall send a report to the court so stating. The report  
3297 shall also indicate whether, in the board, authority, or inpatient facility director's or his designee's  
3298 opinion, the defendant should be released, committed pursuant to Article 5 (§ 37.2-814 et seq.) of  
3299 Chapter 8 of Title 37.2, committed pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, or certified  
3300 pursuant to § 37.2-806 in the event he is found to be unrestorably incompetent. Upon receipt of the  
3301 report, the court shall make a competency determination according to the procedures specified in  
3302 subsection E of § 19.2-169.1. If the court finds that the defendant is incompetent and is likely to remain  
3303 so for the foreseeable future, it shall order that he be (i) released, (ii) committed pursuant to Article 5  
3304 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, or (iii) certified pursuant to § 37.2-806. However, if the  
3305 court finds that the defendant is incompetent and is likely to remain so for the foreseeable future and the  
3306 defendant has been charged with a sexually violent offense, as defined in § 37.2-900, he shall be  
3307 reviewed for commitment pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2. If the court finds the  
3308 defendant incompetent but restorable to competency in the foreseeable future, it may order treatment  
3309 continued until six months have elapsed from the date of the defendant's initial admission under  
3310 subsection A of § 19.2-169.2.

3311 B. At the end of six months from the date of the defendant's initial admission under subsection A of  
3312 § 19.2-169.2 if the defendant remains incompetent in the opinion of the board, authority, or inpatient  
3313 facility director or his designee, the director or his designee shall so notify the court and make  
3314 recommendations concerning disposition of the defendant as described in subsection A. The court shall  
3315 hold a hearing according to the procedures specified in subsection E of § 19.2-169.1 and, if it finds the  
3316 defendant unrestorably incompetent, shall order one of the dispositions described in subsection A. If the  
3317 court finds the defendant incompetent but restorable to competency, it may order continued treatment  
3318 under subsection A of § 19.2-169.2 for additional six-month periods, provided a hearing pursuant to

subsection E of § 19.2-169.1 is held at the completion of each such period and the defendant continues to be incompetent but restorable to competency in the foreseeable future.

C. Unless an incompetent defendant is charged with capital murder or the charges against an incompetent criminal defendant have been previously dismissed, charges against an unrestorably incompetent defendant shall be dismissed on the date upon which his sentence would have expired had he been convicted and received the maximum sentence for the crime charged, or on the date five years from the date of his arrest for such charges, whichever is sooner.

D. If the court orders an unrestorably incompetent defendant to be reviewed for commitment pursuant to § 37.2-904, it shall order the attorney for the Commonwealth in the jurisdiction wherein the defendant was charged and the Commissioner of the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services to provide the Commitment Review Committee established pursuant to § 37.2-902 with any information relevant to the review, including, but not limited to: (i) a copy of the warrant or indictment, (ii) a copy of the defendant's criminal record, (iii) information about the alleged crime, (iv) a copy of the competency report completed pursuant to § 19.2-169.1, and (v) a copy of the report prepared by the director of the defendant's community services board, behavioral health authority, or treating inpatient facility or his designee pursuant to this section. The court shall further order that the defendant be held in the custody of the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services for secure confinement and treatment until the Commitment Review Committee's and Attorney General's review and any subsequent hearing or trial are completed. If the court receives notice that the Attorney General has declined to file a petition for the commitment of an unrestorably incompetent defendant as a sexually violent predator after conducting a review pursuant to § 37.2-905, the court shall order that the defendant be released, committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, or certified pursuant to § 37.2-806.

E. In any case when an incompetent defendant is charged with capital murder, notwithstanding any other provision of this section, the charge shall not be dismissed and the court having jurisdiction over the capital murder case may order that the defendant receive continued treatment under subsection A of § 19.2-169.2 for additional six-month periods without limitation, provided that (i) a hearing pursuant to subsection E of § 19.2-169.1 is held at the completion of each such period, (ii) the defendant remains incompetent, (iii) the court finds continued treatment to be medically appropriate, and (iv) the defendant presents a danger to himself or others.

F. The attorney for the Commonwealth may bring charges that have been dismissed against the defendant when he is restored to competency.

§ 19.2-169.5. Evaluation of sanity at the time of the offense; disclosure of evaluation results.

A. Raising issue of sanity at the time of offense; appointment of evaluators. - If, at any time before trial, the court finds, upon hearing evidence or representations of counsel for the defendant, that there is probable cause to believe that the defendant's sanity will be a significant factor in his defense and that the defendant is financially unable to pay for expert assistance, the court shall appoint one or more qualified mental health experts to evaluate the defendant's sanity at the time of the offense and, where appropriate, to assist in the development of an insanity defense. Such mental health expert shall be (i) a psychiatrist, a clinical psychologist, or an individual with a doctorate degree in clinical psychology who has successfully completed forensic evaluation training as approved by the Commissioner of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services and (ii) qualified by specialized training and experience to perform forensic evaluations. The defendant shall not be entitled to a mental health expert of his own choosing or to funds to employ such expert.

B. Location of evaluation. - The evaluation shall be performed on an outpatient basis, at a mental health facility or in jail, unless the court specifically finds that outpatient services are unavailable, or unless the results of the outpatient evaluation indicate that hospitalization of the defendant for further evaluation of his sanity at the time of the offense is necessary. If either finding is made, the court, under authority of this subsection, may order that the defendant be sent to a hospital designated by the Commissioner of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services as appropriate for evaluation of the defendant under criminal charge. The defendant shall be hospitalized for such time as the director of the hospital deems necessary to perform an adequate evaluation of the defendant's sanity at the time of the offense, but not to exceed 30 days from the date of admission to the hospital.

C. Provision of information to evaluator. - The court shall require the party making the motion for the evaluation, and such other parties as the court deems appropriate, to provide to the evaluators appointed under subsection A any information relevant to the evaluation, including, but not limited to (i) copy of the warrant or indictment; (ii) the names and addresses of the attorney for the Commonwealth, the attorney for the defendant and the judge who appointed the expert; (iii) information pertaining to the alleged crime, including statements by the defendant made to the police and transcripts of preliminary

3380 hearings, if any; (iv) a summary of the reasons for the evaluation request; (v) any available psychiatric,  
3381 psychological, medical or social records that are deemed relevant; and (vi) a copy of the defendant's  
3382 criminal record, to the extent reasonably available.

3383 D. The evaluators shall prepare a full report concerning the defendant's sanity at the time of the  
3384 offense, including whether he may have had a significant mental disease or defect which rendered him  
3385 insane at the time of the offense. The report shall be prepared within the time period designated by the  
3386 court, said period to include the time necessary to obtain and evaluate the information specified in  
3387 subsection C.

3388 E. Disclosure of evaluation results. - The report described in subsection D shall be sent solely to the  
3389 attorney for the defendant and shall be deemed to be protected by the lawyer-client privilege. However,  
3390 the Commonwealth shall be given the report in all felony cases, the results of any other evaluation of  
3391 the defendant's sanity at the time of the offense, and copies of psychiatric, psychological, medical, or  
3392 other records obtained during the course of any such evaluation, after the attorney for the defendant  
3393 gives notice of an intent to present psychiatric or psychological evidence pursuant to § 19.2-168.

3394 F. In any case where the defendant obtains his own expert to evaluate the defendant's sanity at the  
3395 time of the offense, the provisions of subsections D and E, relating to the disclosure of the evaluation  
3396 results, shall apply.

3397 § 19.2-175. Compensation of experts.

3398 Each psychiatrist, clinical psychologist or other expert appointed by the court to render professional  
3399 service pursuant to §§ 19.2-168.1, 19.2-169.1, 19.2-169.5, subsection A of § 19.2-176, §§ 19.2-182.8,  
3400 19.2-182.9, 19.2-264.3:1, 19.2-264.3:3 or § 19.2-301, who is not regularly employed by the  
3401 Commonwealth of Virginia except by the University of Virginia School of Medicine and the Medical  
3402 College of Virginia Commonwealth University, shall receive a reasonable fee for such service. For any  
3403 psychiatrist, clinical psychologist, or other expert appointed by the court to render such professional  
3404 services who is regularly employed by the Commonwealth of Virginia, except by the University of  
3405 Virginia School of Medicine or the Medical College of Virginia Commonwealth University, the fee shall  
3406 be paid only for professional services provided during nonstate hours that have been approved by his  
3407 employing agency as being beyond the scope of his state employment duties. The fee shall be  
3408 determined in each instance by the court that appointed the expert, in accordance with guidelines  
3409 established by the Supreme Court after consultation with the Department of Mental Health, ~~Mental~~  
3410 ~~Retardation~~ *Intellectual Disability* and Substance Abuse Services. Except in capital murder cases the fee  
3411 shall not exceed \$750, but in addition if any such expert is required to appear as a witness in any  
3412 hearing held pursuant to such sections, he shall receive mileage and a fee of \$100 for each day during  
3413 which he is required so to serve. An itemized account of expense, duly sworn to, must be presented to  
3414 the court, and when allowed shall be certified to the Supreme Court for payment out of the state  
3415 treasury, and be charged against the appropriations made to pay criminal charges. Allowance for the fee  
3416 and for the per diem authorized shall also be made by order of the court, duly certified to the Supreme  
3417 Court for payment out of the appropriation to pay criminal charges.

3418 § 19.2-182.2. Verdict of acquittal by reason of insanity to state the fact; temporary custody and  
3419 evaluation.

3420 When the defense is insanity of the defendant at the time the offense was committed, the jurors shall  
3421 be instructed, if they acquit him on that ground, to state the fact with their verdict. The court shall place  
3422 the person so acquitted ("the acquittee") in temporary custody of the Commissioner of Mental Health,  
3423 ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services (hereinafter referred to in this  
3424 chapter as the "Commissioner") for evaluation as to whether the acquittee may be released with or  
3425 without conditions or requires commitment. The evaluation shall be conducted by (i) one psychiatrist  
3426 and (ii) one clinical psychologist. The psychiatrist or clinical psychologist shall be skilled in the  
3427 diagnosis of mental illness and ~~mental retardation~~ *intellectual disabilities* and qualified by training and  
3428 experience to perform such evaluations. The Commissioner shall appoint both evaluators, at least one of  
3429 whom shall not be employed by the hospital in which the acquittee is primarily confined. The evaluators  
3430 shall determine whether the acquittee is currently mentally ill or ~~mentally retarded~~ *intellectually disabled*  
3431 and shall assess the acquittee and report on his condition and need for hospitalization with respect to the  
3432 factors set forth in § 19.2-182.3. The evaluators shall conduct their examinations and report their  
3433 findings separately within forty-five days of the Commissioner's assumption of custody. Copies of the  
3434 report shall be sent to the acquittee's attorney, the attorney for the Commonwealth for the jurisdiction  
3435 where the person was acquitted and the community services board or behavioral health authority as  
3436 designated by the Commissioner. If either evaluator recommends conditional release or release without  
3437 conditions of the acquittee, the court shall extend the evaluation period to permit the hospital in which  
3438 the acquittee is confined and the appropriate community services board or behavioral health authority to  
3439 jointly prepare a conditional release or discharge plan, as applicable, prior to the hearing.

3440 § 19.2-182.3. Commitment; civil proceedings.

3441 Upon receipt of the evaluation report and, if applicable, a conditional release or discharge plan, the



court shall schedule the matter for hearing on an expedited basis, giving the matter priority over other civil matters before the court, to determine the appropriate disposition of the acquittee. Except as otherwise ordered by the court, the attorney who represented the defendant at the criminal proceedings shall represent the acquittee through the proceedings pursuant to this section. The matter may be continued on motion of either party for good cause shown. The acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. The hearing is a civil proceeding.

At the conclusion of the hearing, the court shall commit the acquittee if it finds that he has mental illness or ~~mental retardation~~ *an intellectual disability* and is in need of inpatient hospitalization. For the purposes of this chapter, mental illness includes any mental illness, as defined in § 37.2-100, in a state of remission when the illness may, with reasonable probability, become active. The decision of the court shall be based upon consideration of the following factors:

1. To what extent the acquittee has mental illness or ~~mental retardation~~ *an intellectual disability*, as those terms are defined in § 37.2-100;

2. The likelihood that the acquittee will engage in conduct presenting a substantial risk of bodily harm to other persons or to himself in the foreseeable future;

3. The likelihood that the acquittee can be adequately controlled with supervision and treatment on an outpatient basis; and

4. Such other factors as the court deems relevant.

If the court determines that an acquittee does not need inpatient hospitalization solely because of treatment or habilitation he is currently receiving, but the court is not persuaded that the acquittee will continue to receive such treatment or habilitation, it may commit him for inpatient hospitalization. The court shall order the acquittee released with conditions pursuant to §§ 19.2-182.7 through 19.2-182.9 if it finds that he is not in need of inpatient hospitalization but that he meets the criteria for conditional release set forth in § 19.2-182.7. If the court finds that the acquittee does not need inpatient hospitalization nor does he meet the criteria for conditional release, it shall release him without conditions, provided the court has approved a discharge plan prepared by the appropriate community services board or behavioral health authority in consultation with the appropriate hospital staff.

§ 19.2-182.8. Revocation of conditional release.

If at any time the court that released an acquittee pursuant to § 19.2-182.7 finds reasonable ground to believe that an acquittee on conditional release (i) has violated the conditions of his release or is no longer a proper subject for conditional release based on application of the criteria for conditional release and (ii) requires inpatient hospitalization, it may order an evaluation of the acquittee by a psychiatrist or clinical psychologist, provided the psychiatrist or clinical psychologist is qualified by training and experience to perform forensic evaluations. If the court, based on the evaluation and after hearing evidence on the issue, finds by a preponderance of the evidence that an acquittee on conditional release (i) has violated the conditions of his release or is no longer a proper subject for conditional release based on application of the criteria for conditional release and (ii) is mentally ill or ~~mentally retarded~~ *intellectually disabled* and requires inpatient hospitalization, the court may revoke the acquittee's conditional release and order him returned to the custody of the Commissioner. An acquittee's conditional release shall not be revoked solely because of his voluntary hospital admission.

At any hearing pursuant to this section, the acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. The hearing shall be scheduled on an expedited basis and shall be given priority over other civil matters before the court. Written notice of the hearing shall be provided to the attorney for the Commonwealth for the committing jurisdiction. The hearing is a civil proceeding.

§ 19.2-182.9. Emergency custody of conditionally released acquittee.

When exigent circumstances do not permit compliance with revocation procedures set forth in § 19.2-182.8, any district court judge or a special justice, as defined in § 37.2-100, or a magistrate may issue an emergency custody order, upon the sworn petition of any responsible person or upon his own motion based upon probable cause to believe that an acquittee on conditional release (i) has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) requires inpatient hospitalization. The emergency custody order shall require the acquittee within his judicial district to be taken into custody and transported to a convenient location where a person designated by the community services board or behavioral health authority who is skilled in the diagnosis and treatment of mental illness shall evaluate such acquittee and assess his need for inpatient hospitalization. A law-enforcement officer who, based on his observation or the reliable reports of others, has probable cause to believe that any acquittee on conditional release has violated the conditions of his release and is no longer a proper subject for conditional release and requires emergency evaluation to assess the need

for inpatient hospitalization, may take the acquittee into custody and transport him to an appropriate location to assess the need for hospitalization without prior judicial authorization. The evaluation shall be conducted immediately. The acquittee shall remain in custody until a temporary detention order is issued or until he is released, but in no event shall the period of custody exceed four hours. If it appears from all evidence readily available (i) that the acquittee has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) that he requires emergency evaluation to assess the need for inpatient hospitalization, the district court judge or a special justice, as defined in § 37.2-100, or magistrate, upon the advice of such person skilled in the diagnosis and treatment of mental illness, may issue a temporary detention order authorizing the executing officer to place the acquittee in an appropriate institution for a period not to exceed 48 hours prior to a hearing. If the 48-hour period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the acquittee may be detained until the next day which is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

The committing court or any district court judge or a special justice, as defined in § 37.2-100, shall have jurisdiction to hear the matter. Prior to the hearing, the acquittee shall be examined by a psychiatrist or licensed clinical psychologist, provided the psychiatrist or clinical psychologist is skilled in the diagnosis of mental illness, who shall certify whether the person is in need of hospitalization. At the hearing the acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. Following the hearing, if the court determines, based on a preponderance of the evidence presented at the hearing, that the acquittee (i) has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) has mental illness or ~~mental retardation~~ *intellectual disability* and is in need of inpatient hospitalization, the court shall revoke the acquittee's conditional release and place him in the custody of the Commissioner. An acquittee's conditional release shall not be revoked solely because of his voluntary hospital admission.

When an acquittee on conditional release pursuant to this chapter is taken into emergency custody, detained, or hospitalized, such action shall be considered to have been taken pursuant to this section, notwithstanding the fact that his status as an insanity acquittee was not known at the time of custody, detention, or hospitalization. Detention or hospitalization of an acquittee pursuant to provisions of law other than those applicable to insanity acquittees pursuant to this chapter shall not render the detention or hospitalization invalid. If a person's status as an insanity acquittee on conditional release is not recognized at the time of emergency custody or detention, at the time his status as such is verified, the provisions applicable to such persons shall be applied and the court hearing the matter shall notify the committing court of the proceedings.

§ 19.2-182.13. Authority of Commissioner; delegation to board; liability.

The Commissioner may delegate any of the duties and powers imposed on or granted to him by this chapter to an administrative board composed of persons with demonstrated expertise in such matters. The Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services shall assist the board in its administrative and technical duties. Members of the board shall exercise their powers and duties without compensation and shall be immune from personal liability while acting within the scope of their duties except for intentional misconduct.

§ 19.2-182.16. Copies of orders to Commissioner.

Copies of all orders and notices issued pursuant to this chapter shall be sent to the Commissioner of the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services.

§ 19.2-218.1. Preliminary hearings involving certain sexual crimes against spouses.

A. In any preliminary hearing of a charge for a violation under § 18.2-61, 18.2-67.1, or 18.2-67.2 where the complaining witness is the spouse of the accused, upon a finding of probable cause the court may request that its court services unit, in consultation with any appropriate social services organization, local board of mental health and ~~mental retardation~~ *intellectual disability*, or other community mental health services organization, prepare a report analyzing the feasibility of providing counseling or other forms of therapy for the accused and the probability such treatment will be successful. Based upon this report and any other relevant evidence, the court may, with the consent of the accused, the complaining witness and the attorney for the Commonwealth in any case involving a violation of § 18.2-61, 18.2-67.1 or 18.2-67.2, authorize the accused to submit to and complete a designated course of counseling or therapy. In such case, the hearing shall be adjourned until such time as counseling or therapy is completed or terminated. Upon the completion of counseling or therapy by the accused and after consideration of a final evaluation to be furnished to the court by the person responsible for conducting such counseling or therapy and such further report of the court services unit as the court may require, and after consideration of the views of the complaining witness, the court, in its discretion, may discharge the accused if the court finds such action will promote maintenance of the family unit

and be in the best interest of the complaining witness.

B. No statement or disclosure by the accused concerning the alleged offense made during counseling or any other form of therapy ordered pursuant to this section or § 18.2-61, 18.2-67.1, 18.2-67.2, or 19.2-218.2 may be used against the accused in any trial as evidence, nor shall any evidence against the accused be admitted which was discovered through such statement or disclosure.

§ 19.2-264.3:1. Expert assistance when defendant's mental condition relevant to capital sentencing.

A. Upon (i) motion of the attorney for a defendant charged with or convicted of capital murder and (ii) a finding by the court that the defendant is financially unable to pay for expert assistance, the court shall appoint one or more qualified mental health experts to evaluate the defendant and to assist the defense in the preparation and presentation of information concerning the defendant's history, character, or mental condition, including (i) whether the defendant acted under extreme mental or emotional disturbance at the time of the offense; (ii) whether the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was significantly impaired at the time of the offense; and (iii) whether there are any other factors in mitigation relating to the history or character of the defendant or the defendant's mental condition at the time of the offense. The mental health expert appointed pursuant to this section shall be (i) a psychiatrist, a clinical psychologist, or an individual with a doctorate degree in clinical psychology who has successfully completed forensic evaluation training as approved by the Commissioner of Mental Health, Mental Retardation, Intellectual Disability and Substance Abuse Services and (ii) qualified by specialized training and experience to perform forensic evaluations. The defendant shall not be entitled to a mental health expert of the defendant's own choosing or to funds to employ such expert.

B. Evaluations performed pursuant to subsection A may be combined with evaluations performed pursuant to § 19.2-169.5 and shall be governed by subsections B and C of § 19.2-169.5.

C. The expert appointed pursuant to subsection A shall submit to the attorney for the defendant a report concerning the history and character of the defendant and the defendant's mental condition at the time of the offense. The report shall include the expert's opinion as to (i) whether the defendant acted under extreme mental or emotional disturbance at the time of the offense, (ii) whether the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was significantly impaired, and (iii) whether there are any other factors in mitigation relating to the history or character of the defendant or the defendant's mental condition at the time of the offense.

D. The report described in subsection C shall be sent solely to the attorney for the defendant and shall be protected by the attorney-client privilege. However, the Commonwealth shall be given the report and the results of any other evaluation of the defendant's mental condition conducted relative to the sentencing proceeding and copies of psychiatric, psychological, medical or other records obtained during the course of such evaluation, after the attorney for the defendant gives notice of an intent to present psychiatric or psychological evidence in mitigation pursuant to subsection E.

E. In any case in which a defendant charged with capital murder intends, in the event of conviction, to present testimony of an expert witness to support a claim in mitigation relating to the defendant's history, character or mental condition, he or his attorney shall give notice in writing to the attorney for the Commonwealth, at least 21 days before trial, of his intention to present such testimony. In the event that such notice is not given and the defendant tenders testimony by an expert witness at the sentencing phase of the trial, then the court may, in its discretion, upon objection of the Commonwealth, either allow the Commonwealth a continuance or, under appropriate circumstances, bar the defendant from presenting such evidence.

F. 1. If the attorney for the defendant gives notice pursuant to subsection E and the Commonwealth thereafter seeks an evaluation concerning the existence or absence of mitigating circumstances relating to the defendant's mental condition at the time of the offense, the court shall appoint one or more qualified experts to perform such an evaluation. The court shall order the defendant to submit to such an evaluation, and advise the defendant on the record in court that a refusal to cooperate with the Commonwealth's expert could result in exclusion of the defendant's expert evidence. The qualification of the experts shall be governed by subsection A. The location of the evaluation shall be governed by subsection B of § 19.2-169.5. The attorney for the Commonwealth shall be responsible for providing the experts the information specified in subsection C of § 19.2-169.5. After performing their evaluation, the experts shall report their findings and opinions and provide copies of psychiatric, psychological, medical or other records obtained during the course of the evaluation to the attorneys for the Commonwealth and the defense.

2. If the court finds, after hearing evidence presented by the parties, out of the presence of the jury, that the defendant has refused to cooperate with an evaluation requested by the Commonwealth, the court may admit evidence of such refusal or, in the discretion of the court, bar the defendant from presenting his expert evidence.

G. —Repealed].

§ 19.2-264.3:1.1. Capital cases; determination of intellectual disability.

A. As used in this section and § 19.2-264.3:1.2, the following definition applies:

"~~Mentally retarded~~*Intellectually disabled*" means a disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social and practical adaptive skills.

B. Assessments of ~~mental retardation~~*intellectual disability* under this section and § 19.2-264.3:1.2 shall conform to the following requirements:

1. Assessment of intellectual functioning shall include administration of at least one standardized measure generally accepted by the field of psychological testing and appropriate for administration to the particular defendant being assessed, taking into account cultural, linguistic, sensory, motor, behavioral and other individual factors. Testing of intellectual functioning shall be carried out in conformity with accepted professional practice, and whenever indicated, the assessment shall include information from multiple sources. The Commissioner of Mental Health, ~~Mental Retardation~~*Intellectual Disability* and Substance Abuse Services shall maintain an exclusive list of standardized measures of intellectual functioning generally accepted by the field of psychological testing.

2. Assessment of adaptive behavior shall be based on multiple sources of information, including clinical interview, psychological testing and educational, correctional and vocational records. The assessment shall include at least one standardized measure generally accepted by the field of psychological testing for assessing adaptive behavior and appropriate for administration to the particular defendant being assessed, unless not feasible. In reaching a clinical judgment regarding whether the defendant exhibits significant limitations in adaptive behavior, the examiner shall give performance on standardized measures whatever weight is clinically appropriate in light of the defendant's history and characteristics and the context of the assessment.

3. Assessment of developmental origin shall be based on multiple sources of information generally accepted by the field of psychological testing and appropriate for the particular defendant being assessed, including, whenever available, educational, social service, medical records, prior disability assessments, parental or caregiver reports, and other collateral data, recognizing that valid clinical assessment conducted during the defendant's childhood may not have conformed to current practice standards.

C. In any case in which the offense may be punishable by death and is tried before a jury, the issue of ~~mental retardation~~*intellectual disability*, if raised by the defendant in accordance with the notice provisions of subsection E of § 19.2-264.3:1.2, shall be determined by the jury as part of the sentencing proceeding required by § 19.2-264.4.

In any case in which the offense may be punishable by death and is tried before a judge, the issue of ~~mental retardation~~*intellectual disability*, if raised by the defendant in accordance with the notice provisions of subsection E of § 19.2-264.3:1.2, shall be determined by the judge as part of the sentencing proceeding required by § 19.2-264.4.

The defendant shall bear the burden of proving that he is ~~mentally retarded~~*intellectually disabled* by a preponderance of the evidence.

D. The verdict of the jury, if the issue of ~~mental retardation~~*intellectual disability* is raised, shall be in writing, and, in addition to the forms specified in § 19.2-264.4, shall include one of the following forms:

(1) "We the jury, on the issue joined, having found the defendant guilty of (here set out the statutory language of the offense charged), and that the defendant has proven by a preponderance of the evidence that he is ~~mentally retarded~~*intellectually disabled*, fix his punishment at (i) imprisonment for life or (ii) imprisonment for life and a fine of \$\_\_\_\_\_.

Signed \_\_\_\_\_ foreman"  
or

(2) "We the jury, on the issue joined, having found the defendant guilty of (here set out the statutory language of the offense charged) find that the defendant has not proven by a preponderance of the evidence that he is ~~mentally retarded~~*intellectually disabled*.

Signed \_\_\_\_\_ foreman"

§ 19.2-264.3:1.2. Expert assistance when issue of defendant's intellectual disability relevant to capital sentencing.

A. Upon (i) motion of the attorney for a defendant charged with or convicted of capital murder and (ii) a finding by the court that the defendant is financially unable to pay for expert assistance, the court shall appoint one or more qualified mental health experts to assess whether or not the defendant is ~~mentally retarded~~*intellectually disabled* and to assist the defense in the preparation and presentation of information concerning the defendant's ~~mental retardation~~*intellectual disability*. The mental health expert appointed pursuant to this section shall be (a) a psychiatrist, a clinical psychologist or an individual with a doctorate degree in clinical psychology, (b) skilled in the administration, scoring and interpretation of

intelligence tests and measures of adaptive behavior and (c) qualified by experience and by specialized training, approved by the Commissioner of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, to perform forensic evaluations. The defendant shall not be entitled to a mental health expert of the defendant's own choosing or to funds to employ such expert.

B. Evaluations performed pursuant to subsection A may be combined with evaluations performed pursuant to §§ 19.2-169.1, 19.2-169.5, or § 19.2-264.3:1.

C. The expert appointed pursuant to subsection A shall submit to the attorney for the defendant a report assessing whether the defendant is ~~mentally retarded~~ *intellectually disabled*. The report shall include the expert's opinion as to whether the defendant is ~~mentally retarded~~ *intellectually disabled*.

D. The report described in subsection C shall be sent solely to the attorney for the defendant and shall be protected by the attorney-client privilege. However, the Commonwealth shall be given a copy of the report, the results of any other evaluation of the defendant's ~~mental retardation~~ *intellectual disability* and copies of psychiatric, psychological, medical or other records obtained during the course of the evaluation, after the attorney for the defendant gives notice of an intent to present evidence of ~~mental retardation~~ *intellectual disability* pursuant to subsection E.

E. In any case in which a defendant charged with capital murder intends, in the event of conviction, to present testimony of an expert witness to support a claim that he is ~~mentally retarded~~ *intellectually disabled*, he or his attorney shall give notice in writing to the attorney for the Commonwealth, at least 21 days before trial, of his intention to present such testimony. In the event that such notice is not given and the defendant tenders testimony by an expert witness at the sentencing phase of the trial, then the court may, in its discretion, upon objection of the Commonwealth, either allow the Commonwealth a continuance or, under appropriate circumstances, bar the defendant from presenting such evidence.

F. 1. If the attorney for the defendant gives notice pursuant to subsection E and the Commonwealth thereafter seeks an evaluation concerning the existence or absence of the defendant's ~~mental retardation~~ *intellectual disability*, the court shall appoint one or more qualified experts to perform such an evaluation. The court shall order the defendant to submit to such an evaluation, and advise the defendant on the record in court that a refusal to cooperate with the Commonwealth's experts could result in exclusion of the defendant's expert evidence. The qualification of the experts shall be governed by subsection A. The attorney for the Commonwealth shall be responsible for providing the experts the information specified in subsection C of § 19.2-169.5. After performing their evaluation, the experts shall report their findings and opinions and provide copies of psychiatric, psychological, medical or other records obtained during the course of the evaluation to the attorneys for the Commonwealth and the defense.

2. If the court finds, after hearing evidence presented by the parties, out of the presence of the jury, that the defendant has refused to cooperate with an evaluation requested by the Commonwealth, the court may admit evidence of such refusal or, in the discretion of the court, bar the defendant from presenting his expert evidence.

§ 19.2-264.3:3. Limitations on use of statements or disclosure by defendant during evaluations.

No statement or disclosure by the defendant made during a competency evaluation performed pursuant to § 19.2-169.1, an evaluation performed pursuant to § 19.2-169.5 to determine sanity at the time of the offense, treatment provided pursuant to § 19.2-169.2 or § 19.2-169.6, a mental condition evaluation performed pursuant to § 19.2-264.3:1 or a ~~mental retardation~~ *an intellectual disability* evaluation performed pursuant to § 19.2-264.3:1.2, and no evidence derived from any such statements or disclosures may be introduced against the defendant at the sentencing phase of a capital murder trial for the purpose of proving the aggravating circumstances specified in § 19.2-264.4. Such statements or disclosures shall be admissible in rebuttal only when relevant to issues in mitigation raised by the defense.

§ 19.2-301. Judge shall require examination under § 19.2-300; by whom made; report; expenses of psychiatrist.

The judge shall order the defendant examined by at least one psychiatrist or clinical psychologist who is qualified by specialized training and experience to perform such evaluations. Upon a finding by the court that a psychiatrist or clinical psychologist is not reasonably available for the instant case, the court may appoint a state licensed clinical social worker who has been certified by the Commonwealth as a sex offender treatment provider as defined in § 54.1-3600 and qualified by experience and by specialized training approved by the Commissioner of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services to perform such evaluations. The examination shall be performed on an outpatient basis at a mental health facility or in jail. However, if the court specifically finds that outpatient examination services are unavailable or if the results of outpatient examination indicate that hospitalization of the defendant for further examination is necessary, the court may order the defendant sent to a hospital designated by the Commissioner of Mental Health, ~~Mental Retardation~~ *Intellectual Disability*, and Substance Abuse Services as appropriate for examination of

persons convicted of crimes. The defendant shall then be hospitalized for such time as the director of the hospital deems necessary to perform an adequate examination, but not to exceed 30 days from the date of admission to the hospital. Upon completion of the examination, the examiners shall prepare a written report of their findings and conclusions and shall furnish copies of such report to the defendant, counsel for the defendant, and the attorney for the Commonwealth at least five days prior to sentencing and shall furnish a copy of the report to the judge in advance of the sentencing hearing. The report of the examiners shall at all times be kept confidential by each recipient, except to the extent necessary for the prosecution or defense of any offense, and shall be filed as part of the record in the case and the defendant's copy shall be returned to the court at the conclusion of sentencing. Any report so filed shall be sealed upon the entry of the sentencing order by the court and made available only by court order, except that such report or copies thereof shall be available at any time to the office of the Attorney General for assessment for civil commitment as provided in Chapter 9 (§ 37.2-900 et seq.) of Title 37.2; any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United States; to any agency where the accused is referred for treatment by the court or by probation and parole services; and to counsel for any person who has been indicted jointly for the same felony as the person who is the subject of the report. Any such report shall without court order be made available to counsel for the person who is the subject of the report if that person is charged with a felony subsequent to the time of the preparation of the report.

§ 19.2-302. Construction and administration of §§ 19.2-300 and 19.2-301.

Nothing contained in § 19.2-300 or § 19.2-301 shall be construed to conflict with or repeal any statute in regard to the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, and such sections shall be administered with due regard to the authority of, and in cooperation with, the Commissioner of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services.

§ 19.2-389. Dissemination of criminal history record information.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth for the conduct of investigations of applicants for public employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that

the data shall not be further disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company or volunteer rescue squad; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes approved by family day-care systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719 through 63.2-1721, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' 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;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;

14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery Law (§ 58.1-4000 et seq.), and the Department of Charitable Gaming for the conduct of investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to the limitations set out in subsection E;

16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers for the conduct of investigations of applicants for compensated employment in licensed homes for adults pursuant to § 63.2-1720, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed adult day-care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof in the course of conducting necessary investigations with respect to registered voters, limited to any record of felony convictions;

19. The Commissioner of the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-176, 19.2-177.1, 19.2-182.2, 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or religious elementary or secondary schools which are accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to

3872 a written agreement with the Department of State Police;

3873 24. Public and nonprofit private colleges and universities for the purpose of screening individuals  
3874 who are offered or accept employment;

3875 25. Executive directors of community services boards or the personnel director serving the  
3876 community services board for the purpose of determining an individual's fitness for employment  
3877 pursuant to §§ 37.2-506 and 37.2-607;

3878 26. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of  
3879 determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

3880 27. The Commissioner of the Department of Social Services for the purpose of locating persons who  
3881 owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided  
3882 that only the name, address, demographics and social security number of the data subject shall be  
3883 released;

3884 28. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of  
3885 Chapter 4 of Title 37.2 by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability*  
3886 and Substance Abuse Services for the purpose of determining if any applicant who accepts employment  
3887 in any direct consumer care position has been convicted of a crime that affects their fitness to have  
3888 responsibility for the safety and well-being of persons with mental illness, ~~mental retardation~~ *intellectual*  
3889 *disabilities* and substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

3890 29. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants  
3891 for a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.)  
3892 and 21 (§ 46.2-2100 et seq.) of Title 46.2;

3893 30. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates  
3894 for the purpose of determining if any person being considered for election to any judgeship has been  
3895 convicted of a crime;

3896 31. Heads of state agencies in which positions have been identified as sensitive for the purpose of  
3897 determining an individual's fitness for employment in positions designated as sensitive under Department  
3898 of Human Resource Management policies developed pursuant to § 2.2-1201.1. Dissemination of criminal  
3899 history record information to the agencies shall be limited to those positions generally described as  
3900 directly responsible for the health, safety and welfare of the general populace or protection of critical  
3901 infrastructures;

3902 32. The Office of the Attorney General, for all criminal justice activities otherwise permitted under  
3903 subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually  
3904 Violent Predators Act (§ 37.2-900 et seq.);

3905 33. Shipyards, to the extent permitted by federal law or regulation, engaged in the design,  
3906 construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary  
3907 companies, for the conduct of investigations of applications for employment or for access to facilities,  
3908 by contractors, leased laborers, and other visitors;

3909 34. Any employer of individuals whose employment requires that they enter the homes of others, for  
3910 the purpose of screening individuals who apply for, are offered, or have accepted such employment;

3911 35. Public agencies when and as required by federal or state law to investigate (i) applicants as  
3912 providers of adult foster care and home-based services or (ii) any individual with whom the agency is  
3913 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1,  
3914 subject to the restriction that the data shall not be further disseminated by the agency to any party other  
3915 than a federal or state authority or court as may be required to comply with an express requirement of  
3916 law for such further dissemination, subject to limitations set out in subsection G;

3917 36. The Department of Medical Assistance Services, or its designee, for the purpose of screening  
3918 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered,  
3919 or have accepted a position related to the provision of transportation services to enrollees in the  
3920 Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other  
3921 program administered by the Department of Medical Assistance Services; and

3922 37. Other entities as otherwise provided by law.

3923 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records  
3924 requested may be relevant to such case, the court shall enter an order requiring the Central Criminal  
3925 Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons  
3926 designated in the order on whom a report has been made under the provisions of this chapter.

3927 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to  
3928 before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the  
3929 criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a  
3930 copy of conviction data covering the person named in the request to the person making the request;  
3931 however, such person on whom the data is being obtained shall consent in writing, under oath, to the  
3932 making of such request. A person receiving a copy of his own conviction data may utilize or further  
3933 disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data



subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision 15 of subsection A shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02 and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities, licensed district homes for adults, and licensed adult day-care centers pursuant to subdivision 16 of subsection A shall be limited to the convictions on file with the Exchange for any offense specified in § 63.1-189.1 or 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision 35 of subsection A shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1719.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request; provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace, clerks of court, Secretary of the Commonwealth and Corrections officials to State Police; material submitted by other agencies.

A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest, including those arrests involving the taking into custody of, or service of process upon, any person on charges resulting from an indictment, presentment or information, the arrest on capias or warrant for failure to appear, and the service of a warrant for another jurisdiction, on any of the following charges:

a. Treason;

b. Any felony;

c. Any offense punishable as a misdemeanor under Title 54.1; or

d. Any misdemeanor punishable by confinement in jail (i) under Title 18.2 or 19.2, except an arrest for a violation of § 18.2-119, Article 2 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, or any similar ordinance of any county, city or town, or (ii) under § 20-61.

The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints of the individual arrested. Effective January 1, 2006, the corresponding photograph of the individual arrested shall accompany the report. Fingerprint cards prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the appropriate bureau. Nothing in this section shall preclude each local law-enforcement agency from maintaining its own separate photographic database.

2. For persons arrested and released on summonses in accordance with § 19.2-74, such report shall not be required until (i) a conviction is entered and no appeal is noted or if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court dismisses the proceeding pursuant to § 18.2-251; or (iii) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. Upon such conviction or acquittal, the court shall remand the individual to the custody of the office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief

3995 law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is  
3996 completed after a determination of guilt or acquittal by reason of insanity. The court shall require the  
3997 officer to complete the report immediately following the person's conviction or acquittal, and the  
3998 individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be  
3999 served by him or ordered him committed to the custody of the Commissioner of the Department of  
4000 Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services.

4001 B. Within 72 hours following the receipt of (i) a warrant or capias for the arrest of any person on a  
4002 charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to § 19.2-92, the  
4003 law-enforcement agency which received the warrant shall enter the person's name and other appropriate  
4004 information required by the Department of State Police into the "information systems" known as the  
4005 Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant  
4006 to Chapter 2 (§ 52-12 et seq.) of Title 52 and the National Crime Information Center (NCIC),  
4007 maintained by the Federal Bureau of Investigation. The report shall include the person's name, date of  
4008 birth, social security number and such other known information which the State Police or Federal  
4009 Bureau of Investigation may require. Where feasible and practical, the magistrate or court issuing the  
4010 warrant or capias may transfer information electronically into VCIN. When the information is  
4011 electronically transferred to VCIN, the court or magistrate shall forthwith forward the warrant or capias  
4012 to the local police department or sheriff's office. When criminal process has been ordered destroyed  
4013 pursuant to § 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of  
4014 any information relating to the destroyed criminal process from the VCIN and NCIC systems.

4015 C. The clerk of each circuit court and district court shall make a report to the Central Criminal  
4016 Records Exchange of (i) any dismissal, indefinite postponement or continuance, charge still pending due  
4017 to mental incompetency or incapacity, nolle prosequi, acquittal, or conviction of, including any sentence  
4018 imposed, or failure of a grand jury to return a true bill as to, any person charged with an offense listed  
4019 in subsection A, including any action which may have resulted from an indictment, presentment or  
4020 information, and (ii) any adjudication of delinquency based upon an act which, if committed by an  
4021 adult, would require fingerprints to be filed pursuant to subsection A. In the case of offenses not  
4022 required to be reported to the Exchange by subsection A, the reports of any of the foregoing dispositions  
4023 shall be filed by the law-enforcement agency making the arrest with the arrest record required to be  
4024 maintained by § 15.2-1722. Upon conviction of any person, including juveniles tried and convicted in  
4025 the circuit courts pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, for an offense for  
4026 which registration is required as defined in § 9.1-902, the clerk shall within seven days of sentencing  
4027 submit a report to the Sex Offender and Crimes Against Minors Registry. The report to the Registry  
4028 shall include the name of the person convicted and all aliases which he is known to have used, the date  
4029 and locality of the conviction for which registration is required, his date of birth, social security number,  
4030 last known address, and specific reference to the offense for which he was convicted. No report of  
4031 conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has  
4032 elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show  
4033 that any conviction or adjudication has been nullified in any manner, he shall also make a report of that  
4034 fact to the Exchange and, if appropriate, to the Registry. In addition, each clerk of a circuit court, upon  
4035 receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or  
4036 to the law-enforcement agency making the arrest in the case of offenses not required to be reported to  
4037 the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other  
4038 amendment to a prior sentence or disposition previously reported. When criminal process is ordered  
4039 destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the law-enforcement agency that  
4040 entered the warrant or capias into the VCIN system.

4041 D. In addition to those offenses enumerated in subsection A of this section, the Central Criminal  
4042 Records Exchange may receive, classify and file any other fingerprints, photographs, and records of  
4043 arrest or confinement submitted to it by any law-enforcement agency or any correctional institution.

4044 E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for maintaining  
4045 correctional status information, as required by the regulations of the Department of Criminal Justice  
4046 Services, with respect to individuals about whom reports have been made under the provisions of this  
4047 chapter shall make reports of changes in correctional status information to the Central Criminal Records  
4048 Exchange. The reports to the Exchange shall include any commitment to or release or escape from a  
4049 state or local correctional facility, including commitment to or release from a parole or probation  
4050 agency.

4051 F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported to  
4052 the Exchange by the office of the Secretary of the Commonwealth.

4053 G. Officials responsible for reporting disposition of charges, and correctional changes of status of  
4054 individuals under this section, including those reports made to the Registry, shall adopt procedures  
4055 reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible  
4056 by the most expeditious means and in no instance later than 30 days after occurrence of the disposition

or correctional change of status; and (ii) to report promptly any correction, deletion, or revision of the information.

H. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records Exchange shall notify all criminal justice agencies known to have previously received the information.

As used in this section, the term "chief law-enforcement officer" means the chief of police of cities and towns and sheriffs of counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall be controlling.

§ 20-88. Support of parents by children.

It shall be the joint and several duty of all persons eighteen years of age or over, of sufficient earning capacity or income, after reasonably providing for his or her own immediate family, to assist in providing for the support and maintenance of his or her mother or father, he or she being then and there in necessitous circumstances.

If there be more than one person bound to support the same parent or parents, the persons so bound to support shall jointly and severally share equitably in the discharge of such duty. Taking into consideration the needs of the parent or parents and the circumstances affecting the ability of each person to discharge the duty of support, the court having jurisdiction shall have the power to determine and order the payment, by such person or persons so bound to support, of that amount for support and maintenance which to the court may seem just. Where the court ascertains that any person has failed to render his or her proper share in such support and maintenance it may, upon the complaint of any party or on its own motion, compel contribution by that person to any person or authority which has theretofore contributed to the support or maintenance of the parent or parents. The court may from time to time revise the orders entered by it or by any other court having jurisdiction under the provisions of this section, in such manner as to it may seem just.

The juvenile and domestic relations district court shall have exclusive original jurisdiction in all cases arising under this section. Any person aggrieved shall have the same right of appeal as is provided by law in other cases.

All proceedings under this section shall conform as nearly as possible to the proceedings under the other provisions of this chapter, and the other provisions of this chapter shall apply to cases arising under this section in like manner as though they were incorporated in this section. Prosecutions under this section shall be in the jurisdiction where the parent or parents reside.

This section shall not apply if there is substantial evidence of desertion, neglect, abuse or willful failure to support any such child by the father or mother, as the case may be, prior to the child's emancipation or, except as provided hereafter in this section, if a parent is otherwise eligible for and is receiving public assistance or services under a federal or state program.

To the extent that the financial responsibility of children for any part of the costs incurred in providing medical assistance to their parents pursuant to the plan provided for in § 32.1-325 is not restricted by that plan and to the extent that the financial responsibility of children for any part of the costs incurred in providing to their parents services rendered, administered or funded by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services is not restricted by federal law, the provisions of this section shall apply. A proceeding may be instituted in accordance with this section in the name of the Commonwealth by the state agency administering the program of assistance or services in order to compel any child of a parent receiving such assistance or services to reimburse the Commonwealth for such portion of the costs incurred in providing the assistance or services as the court may determine to be reasonable. If costs are incurred for the institutionalization of a parent, the children shall in no case be responsible for such costs for more than sixty months of institutionalization.

Any person violating the provisions of an order entered pursuant to this section shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding \$500 or imprisonment in jail for a period not exceeding twelve months or both.

§ 22.1-7. Responsibility of each state board, agency and institution having children in residence or in custody.

Each state board, state agency and state institution having children in residence or in custody shall have responsibility for providing for the education and training to such children which is at least comparable to that which would be provided to such children in the public school system. Such board, agency or institution may provide such education and training either directly with its own facilities and personnel in cooperation with the Board of Education or under contract with a school division or any other public or private nonreligious school, agency or institution. The Board of Education shall supervise the education and training provided to school-age residents in state ~~mental retardation~~ *persons with intellectual disabilities* facilities for *persons with intellectual disabilities* and provide for and direct the education for school-age residents in state mental health facilities in cooperation with the Department of Mental Health, ~~Mental~~

4118 ~~Retardation~~*Intellectual Disability* and Substance Abuse Services. The Board shall prescribe standards and  
4119 regulations for all such education and training provided directly by a state board, state agency or state  
4120 institution. Each state board, state agency or state institution providing such education and training shall  
4121 submit annually its program therefor to the Board of Education for approval in accordance with  
4122 regulations of the Board. If any child in the custody of any state board, state agency or state institution  
4123 is a child with disabilities as defined in § 22.1-213 and such board, agency or institution must contract  
4124 with a private nonreligious school to provide special education as defined in § 22.1-213 for such child,  
4125 the state board, state agency or state institution may proceed as a guardian pursuant to the provisions of  
4126 subsection A of § 22.1-218.

4127 § 22.1-205. Driver education programs.

4128 A. The Board of Education shall establish for the public school system a standardized program of  
4129 driver education in the safe operation of motor vehicles. Such program shall consist of classroom  
4130 training and behind-the-wheel driver training. However, any student who participates in such a program  
4131 of driver education shall meet the academic requirements established by the Board, and no student in a  
4132 course shall be permitted to operate a motor vehicle without a license or permit to do so issued by the  
4133 Department of Motor Vehicles. The program shall include instruction concerning (i) alcohol and drug  
4134 abuse, (ii) aggressive driving, (iii) distracted driving, (iv) motorcycle awareness, and (v) organ and tissue  
4135 donor awareness. Such instruction shall be developed by the Department in cooperation with the  
4136 Virginia Alcohol Safety Action Program, the Department of Health, and the Department of Mental  
4137 Health, ~~Mental Retardation~~*Intellectual Disability* and Substance Abuse Services, as appropriate. Such  
4138 program shall require a minimum number of miles driven during the behind-the-wheel driver training.

4139 B. The Board shall assist school divisions by preparation, publication and distribution of competent  
4140 driver education instructional materials to ensure a more complete understanding of the responsibilities  
4141 and duties of motor vehicle operators.

4142 C. Each school board shall determine whether to offer the program of driver education in the safe  
4143 operation of motor vehicles and, if offered, whether such program shall be an elective or a required  
4144 course. In addition to the fee approved by the Board of Education pursuant to the appropriation act that  
4145 allows local school boards to charge a per pupil fee for behind-the-wheel driver education, the Board of  
4146 Education may authorize a local school board's request to assess a surcharge in order to further recover  
4147 program costs that exceed state funds distributed through basic aid to school divisions offering driver  
4148 education programs. Each school board may waive the fee or the surcharge in total or in part for those  
4149 students it determines cannot pay the fee or surcharge. Only school divisions complying with the  
4150 standardized program and regulations established by the Board of Education and the provisions of  
4151 § 46.2-335 shall be entitled to participate in the distribution of state funds appropriated for driver  
4152 education.

4153 D. The actual initial driving instruction shall be conducted, with motor vehicles equipped as may be  
4154 required by regulation of the Board of Education, on private or public property removed from public  
4155 highways if practicable; if impracticable, then, at the request of the school board, the Commonwealth  
4156 Transportation Board shall designate a suitable section of road near the school to be used for such  
4157 instruction. Such section of road shall be marked with signs, which the Commonwealth Transportation  
4158 Board shall supply, giving notice of its use for driving instruction. Such signs shall be removed at the  
4159 close of the instruction period. No vehicle other than those used for driver training shall be operated  
4160 between such signs at a speed in excess of 25 miles per hour. Violation of this limit shall be a Class 4  
4161 misdemeanor.

4162 E. The Board of Education may, in its discretion, promulgate regulations for the use and certification  
4163 of paraprofessionals as teaching assistants in the driver education programs of school divisions.

4164 F. The Board of Education shall approve correspondence courses for the classroom training  
4165 component of driver education. These correspondence courses shall be consistent in quality with  
4166 instructional programs developed by the Board for classroom training in the public schools. Students  
4167 completing the correspondence courses for classroom training, who are eligible to take behind-the-wheel  
4168 driver training, may receive behind-the-wheel driver training (i) from a public school, upon payment of  
4169 the required fee, if the school division offers behind-the-wheel driver training and space is available, (ii)  
4170 from a driver training school licensed by the Department of Motor Vehicles, or (iii) in the case of a  
4171 home schooling parent or guardian instructing his own child who meets the requirements for home  
4172 school instruction under § 22.1-254.1 or subdivision B 1 of § 22.1-254, from a behind-the-wheel training  
4173 course approved by the Board. Nothing herein shall be construed to require any school division to  
4174 provide behind-the-wheel driver training to nonpublic school students.

4175 § 22.1-209.2. Programs and teachers in regional detention homes, certain local detention homes and  
4176 state agencies and institutions.

4177 The Board of Education shall prepare and supervise the implementation in the regional detention  
4178 homes and those local detention homes having teachers whose salaries were being funded by the  
4179 Commonwealth on January 1, 1984, a program designed to educate and train the children detained in the

homes. In addition, the Board shall supervise those programs of evaluation, education and training provided to school-age children by the Department of Health, the Department of Mental Health, ~~Mental Retardation~~*Intellectual Disability* and Substance Abuse Services, the children's teaching hospital associated with the Eastern Virginia Medical School, the Virginia Commonwealth University Health System Authority, and the University of Virginia Hospitals pursuant to the Board's standards and regulations as required by § 22.1-7.

The Board shall promulgate such rules and regulations as may be necessary to conform these programs with the applicable federal and state laws and regulations including, but not limited to, teacher/student ratios and special education requirements for children with disabilities. The education programs in the relevant detention homes and state agencies and institutions shall be approved by the Board and the Board shall prepare a budget for these educational programs which shall be solely supported by such general funds as are appropriated by the General Assembly for this purpose. Teacher staffing ratios for regional or local detention homes shall be based on a ratio of one teacher for every twelve beds based on the capacity of the facility; however, if the previous year's average daily attendance exceeds this bed capacity, the ratio shall be based on the average daily attendance at the facility as calculated by the Department of Education from the previous school year.

The Board of Education shall enter into contracts with the relevant state agency or institution or detention facility or the local school divisions in which the state agencies or institutions or the regional detention homes and the relevant local detention homes are located for the hiring and supervision of teachers.

In any case in which the Board enters into a contract with the relevant state agency or institution, the Department of Human Resource Management shall establish salary schedules for the teachers which are competitive with those in effect for the school divisions in which the agency or institution is located.

§ 22.1-213. Definitions.

As used in this article:

"Children with disabilities" means those persons (i) who are aged two to twenty-one, inclusive, having reached the age of two by the date specified in § 22.1-254, (ii) who are ~~mentally retarded~~*intellectually disabled*, physically disabled, seriously emotionally disturbed, speech impaired, hearing impaired, visually impaired, multiple disabled, other health impaired including autistic or who have a specific learning disability or who are otherwise disabled as defined by the Board of Education and (iii) who because of such impairments need special education.

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a disabled child to benefit from special education, including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

"Special education" means specially designed instruction at no cost to the parent, to meet the unique needs of a disabled child, including classroom instruction, home instruction, instruction provided in hospitals and institutions, instruction in physical education and instruction in career and technical education.

"Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. The term does not include children who have learning problems that are primarily the result of visual, hearing or motor handicaps, of ~~mental retardation~~*intellectual disability*, or of environmental, cultural or economic disadvantage.

§ 22.1-214.2. Definition of "supervise" as related to educational programs provided for or by Department of Mental Health, Intellectual Disability and Substance Abuse Services.

For the purposes of subsection F of § 22.1-214 as related to the educational programs provided for or by the Department of Mental Health, ~~Mental Retardation~~*Intellectual Disability* and Substance Abuse Services, "supervise" shall mean providing active support in (i) designing mechanisms for maintaining constant direct contact and the sharing of ideas, approaches and innovations between the Department of Mental Health, ~~Mental Retardation~~*Intellectual Disability* and Substance Abuse Services and the facility staff responsible for providing educational services; (ii) providing consistent oversight, with particular attention to the mental health programs, to ensure that the availability of educational resources and the distribution of funds clearly reflect the needs of the different student populations residing in the various facilities; (iii) developing guidelines, in cooperation with the Department of Mental Health, ~~Mental Retardation~~*Intellectual Disability* and Substance Abuse Services for the evaluation of the performance of the education directors or other education supervisors employed by the Department of Mental Health, ~~Mental Retardation~~*Intellectual Disability* and Substance Abuse Services; (iv) developing and

4241 implementing, in cooperation with the Department of Mental Health, ~~Mental Retardation~~ *Intellectual*  
4242 *Disability* and Substance Abuse Services, programs to ensure that the educational and treatment needs of  
4243 dually diagnosed children in state institutions are met; (v) ensuring that the expertise of the Department  
4244 of Education is utilized by providing technical assistance to the education programs provided for or by  
4245 the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse  
4246 Services in the areas of selection and acquisition of educational materials, curriculum development  
4247 including career and technical education, when appropriate, and applications for federal grants.

4248 § 22.1-214.3. Department to develop certain curriculum guidelines; Board to approve.

4249 The Department of Education shall develop curricula for the school-age residents of the state training  
4250 centers for the ~~mentally retarded~~ *intellectually disabled* and curriculum guidelines for the school-age  
4251 residents of the state mental health facilities in cooperation with the Department of Mental Health,  
4252 ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services and representatives of the  
4253 teachers employed to provide instruction to the children. Prior to implementation, the Board of  
4254 Education shall approve these curricula and curriculum guidelines.

4255 These curricula and curriculum guidelines shall be designed to provide a range of programs and  
4256 suggested program sequences for different functioning levels and handicaps and shall be reviewed and  
4257 revised at least every three years. In addition to academic programming, the curriculum guidelines for  
4258 the school-age residents of the state mental health facilities shall include affective education and physical  
4259 education as well as independent living and career and technical education, with particular emphasis on  
4260 the needs of older adolescents and young adults.

4261 § 22.1-215. School divisions to provide special education; plan to be submitted to Board.

4262 Each school division shall provide free and appropriate education, including special education, for the  
4263 children with disabilities residing within its jurisdiction in accordance with regulations of the Board of  
4264 Education.

4265 For the purposes of this section, "children with disabilities, residing within its jurisdiction" shall  
4266 include: (i) those individuals of school age identified as appropriate to be placed in public school  
4267 programs, who are residing in a state institution operated by the Department of Mental Health, ~~Mental~~  
4268 ~~Retardation~~ *Intellectual Disability* and Substance Abuse Services located within the school division, or  
4269 (ii) those individuals of school age who are Virginia residents and are placed and living in a foster care  
4270 home or child-caring institution or group home located within the school division and licensed under the  
4271 provisions of Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 as a result of being in the custody of a local  
4272 department of social services or welfare or being privately placed, not solely for school purposes.

4273 The Board of Education shall promulgate regulations to identify those children placed within  
4274 facilities operated by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and  
4275 Substance Abuse Services who are eligible to be appropriately placed in public school programs.

4276 The cost of the education provided to children residing in the state institutions, who are appropriate  
4277 to place within the public schools, shall remain the responsibility of the Department of Mental Health,  
4278 ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services. The cost of the education  
4279 provided to children who are not residents of the Commonwealth and are placed and living in a foster  
4280 care home or child-caring institution or group home located within the school division and licensed  
4281 under the provisions of Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 shall be billed to the sending  
4282 agency or person by the school division as provided in subsection C of § 22.1-5. No school division  
4283 shall refuse to educate any such child or charge tuition to any such child.

4284 Each school division shall submit to the Board of Education in accordance with the schedule and by  
4285 the date specified by the Board, a plan acceptable to the Board for such education for the period  
4286 following and a report indicating the extent to which the plan required by law for the preceding period  
4287 has been implemented. However, the schedule specified by the Board shall not require plans to be  
4288 submitted more often than annually unless changes to the plan are required by federal or state law or  
4289 regulation.

4290 § 22.1-217.1. Programs for the research and development of innovative methods of teaching  
4291 intellectually disabled, mentally ill or emotionally disturbed children.

4292 For the purpose of improving the quality of the education and training provided to the school-age  
4293 residents of the state mental health and ~~mental retardation~~ facilities *and facilities for persons with*  
4294 *intellectual disabilities*, there is hereby established a program of grants, from such funds as are  
4295 appropriated by the General Assembly, to promote the research and development of innovative methods  
4296 of teaching ~~mentally retarded~~ *intellectually disabled*, mentally ill or emotionally disturbed children in  
4297 residential settings. This program shall be available to the education directors and instructional staffs of  
4298 the institutions administered by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual*  
4299 *Disability* and Substance Abuse Services. The Board of Education shall award these grants on the basis  
4300 of the recommendations of an advisory committee composed of the Director of the Virginia Treatment  
4301 Center for Children, two representatives of the Department of Education and two representatives of the  
4302 Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services.

The advisory committee shall establish objectives for these grants, develop requests for proposals and set criteria for evaluating the applications for funds.

§ 22.1-253.13:2. Standard 2. Instructional, administrative, and support personnel.

A. The Board shall establish requirements for the licensing of teachers, principals, superintendents, and other professional personnel.

B. School boards shall employ licensed instructional personnel qualified in the relevant subject areas.

C. Each school board shall assign licensed instructional personnel in a manner that produces divisionwide ratios of students in average daily membership to full-time equivalent teaching positions, excluding special education teachers, principals, assistant principals, counselors, and librarians, that are not greater than the following ratios: (i) 24 to one in kindergarten with no class being larger than 29 students; if the average daily membership in any kindergarten class exceeds 24 pupils, a full-time teacher's aide shall be assigned to the class; (ii) 24 to one in grades one, two, and three with no class being larger than 30 students; (iii) 25 to one in grades four through six with no class being larger than 35 students; and (iv) 24 to one in English classes in grades six through 12.

Within its regulations governing special education programs, the Board shall seek to set pupil/teacher ratios for pupils with ~~mental retardation~~ *intellectual disabilities* that do not exceed the pupil/teacher ratios for self-contained classes for pupils with specific learning disabilities.

Further, school boards shall assign instructional personnel in a manner that produces schoolwide ratios of students in average daily memberships to full-time equivalent teaching positions of 21 to one in middle schools and high schools. School divisions shall provide all middle and high school teachers with one planning period per day or the equivalent, unencumbered of any teaching or supervisory duties.

D. Each local school board shall employ with state and local basic, special education, gifted, and career and technical education funds a minimum number of licensed, full-time equivalent instructional personnel for each 1,000 students in average daily membership (ADM) as set forth in the appropriation act. Calculations of kindergarten positions shall be based on full-day kindergarten programs. Beginning with the March 31 report of average daily membership, those school divisions offering half-day kindergarten with pupil/teacher ratios that exceed 30 to one shall adjust their average daily membership for kindergarten to reflect 85 percent of the total kindergarten average daily memberships, as provided in the appropriation act.

E. In addition to the positions supported by basic aid and in support of regular school year programs of prevention, intervention, and remediation, state funding, pursuant to the appropriation act, shall be provided to fund certain full-time equivalent instructional positions for each 1,000 students in grades K through 12 who are identified as needing prevention, intervention, and remediation services. State funding for prevention, intervention, and remediation programs provided pursuant to this subsection and the appropriation act may be used to support programs for educationally at-risk students as identified by the local school boards.

F. In addition to the positions supported by basic aid and those in support of regular school year programs of prevention, intervention, and remediation, state funding, pursuant to the appropriation act, shall be provided to support 17 full-time equivalent instructional positions for each 1,000 students identified as having limited English proficiency.

G. In addition to the full-time equivalent positions required elsewhere in this section, each local school board shall employ the following reading specialists in elementary schools, one full-time in each elementary school at the discretion of the local school board.

H. Each local school board shall employ, at a minimum, the following full-time equivalent positions for any school that reports fall membership, according to the type of school and student enrollment:

1. Principals in elementary schools, one half-time to 299 students, one full-time at 300 students; principals in middle schools, one full-time, to be employed on a 12-month basis; principals in high schools, one full-time, to be employed on a 12-month basis;

2. Assistant principals in elementary schools, one half-time at 600 students, one full-time at 900 students; assistant principals in middle schools, one full-time for each 600 students; assistant principals in high schools, one full-time for each 600 students;

3. Librarians in elementary schools, one part-time to 299 students, one full-time at 300 students; librarians in middle schools, one-half time to 299 students, one full-time at 300 students, two full-time at 1,000 students; librarians in high schools, one half-time to 299 students, one full-time at 300 students, two full-time at 1,000 students;

4. Guidance counselors in elementary schools, one hour per day per 100 students, one full-time at 500 students, one hour per day additional time per 100 students or major fraction thereof; guidance counselors in middle schools, one period per 80 students, one full-time at 400 students, one additional period per 80 students or major fraction thereof; guidance counselors in high schools, one period per 70 students, one full-time at 350 students, one additional period per 70 students or major fraction thereof; and

4364 5. Clerical personnel in elementary schools, part-time to 299 students, one full-time at 300 students;  
4365 clerical personnel in middle schools, one full-time and one additional full-time for each 600 students  
4366 beyond 200 students and one full-time for the library at 750 students; clerical personnel in high schools,  
4367 one full-time and one additional full-time for each 600 students beyond 200 students and one full-time  
4368 for the library at 750 students.

4369 I. Local school boards shall employ five full-time equivalent positions per 1,000 students in grades  
4370 kindergarten through five to serve as elementary resource teachers in art, music, and physical education.

4371 J. Local school boards shall employ two full-time equivalent positions per 1,000 students in grades  
4372 kindergarten through 12, one to provide technology support and one to serve as an instructional  
4373 technology resource teacher.

4374 K. Local school boards may employ additional positions that exceed these minimal staffing  
4375 requirements. These additional positions may include, but are not limited to, those funded through the  
4376 state's incentive and categorical programs as set forth in the appropriation act.

4377 L. A combined school, such as kindergarten through 12, shall meet at all grade levels the staffing  
4378 requirements for the highest grade level in that school; this requirement shall apply to all staff, except  
4379 for guidance counselors, and shall be based on the school's total enrollment; guidance counselor staff  
4380 requirements shall, however, be based on the enrollment at the various school organization levels, i.e.,  
4381 elementary, middle, or high school. The Board of Education may grant waivers from these staffing  
4382 levels upon request from local school boards seeking to implement experimental or innovative programs  
4383 that are not consistent with these staffing levels.

4384 M. School boards shall, however, annually, on or before January 1, report to the public the actual  
4385 pupil/teacher ratios in elementary school classrooms by school for the current school year. Such actual  
4386 ratios shall include only the teachers who teach the grade and class on a full-time basis and shall  
4387 exclude resource personnel. School boards shall report pupil/teacher ratios that include resource teachers  
4388 in the same annual report. Any classes funded through the voluntary kindergarten through third grade  
4389 class size reduction program shall be identified as such classes. Any classes having waivers to exceed  
4390 the requirements of this subsection shall also be identified. Schools shall be identified; however, the data  
4391 shall be compiled in a manner to ensure the confidentiality of all teacher and pupil identities.

4392 N. Students enrolled in a public school on a less than full-time basis shall be counted in ADM in the  
4393 relevant school division. Students who are either (i) enrolled in a nonpublic school or (ii) receiving  
4394 home instruction pursuant to § 22.1-254.1, and who are enrolled in public school on a less than full-time  
4395 basis in any mathematics, science, English, history, social science, career and technical education, fine  
4396 arts, foreign language, or health education or physical education course shall be counted in the ADM in  
4397 the relevant school division on a pro rata basis as provided in the appropriation act. Each such course  
4398 enrollment by such students shall be counted as 0.25 in the ADM; however, no such nonpublic or home  
4399 school student shall be counted as more than one-half a student for purposes of such pro rata  
4400 calculation. Such calculation shall not include enrollments of such students in any other public school  
4401 courses.

4402 O. Each local school board shall provide those support services that are necessary for the efficient  
4403 and cost-effective operation and maintenance of its public schools.

4404 For the purposes of this title, unless the context otherwise requires, "support services" shall include  
4405 services provided by the school board members; the superintendent; assistant superintendents; student  
4406 services (including guidance counselors, social workers, and homebound, improvement, principal's office,  
4407 and library-media positions); attendance and health positions; administrative, technical, and clerical  
4408 positions; operation and maintenance positions; educational technology positions; school nurses; and  
4409 pupil transportation positions.

4410 Pursuant to the appropriation act, support services shall be funded from basic school aid on the basis  
4411 of prevailing statewide costs.

4412 § 22.1-272.1. Responsibility to contact parent of student at imminent risk of suicide; notice to be  
4413 given to social services if parental abuse or neglect; Board of Education, in cooperation with the  
4414 Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services  
4415 and the Department of Health, to develop guidelines for parental contact.

4416 A. Any person licensed as administrative or instructional personnel by the Board of Education and  
4417 employed by a local school board who, in the scope of his employment, has reason to believe, as a  
4418 result of direct communication from a student, that such student is at imminent risk of suicide, shall, as  
4419 soon as practicable, contact at least one of such student's parents to ask whether such parent is aware of  
4420 the student's mental state and whether the parent wishes to obtain or has already obtained counseling for  
4421 such student. Such contact shall be made in accordance with the provisions of the guidelines required by  
4422 subsection C.

4423 B. If the student has indicated that the reason for being at imminent risk of suicide relates to parental  
4424 abuse or neglect, this contact shall not be made with the parent. Instead, the person shall, as soon as  
4425 practicable, notify the local department of social services of the county or city wherein the child resides



or wherein the abuse or neglect is believed to have occurred or the state Department of Social Services' toll-free child abuse and neglect hotline, as required by § 63.2-1509. When giving this notice to the local or state department, the person shall stress the need to take immediate action to protect the child from harm.

C. The Board of Education, in cooperation with the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services and the Department of Health, shall develop guidelines for making the contact required by subsection A. These guidelines shall include, but need not be limited to, (i) criteria to assess the suicide risks of students, (ii) characteristics to identify potentially suicidal students, (iii) appropriate responses to students expressing suicidal intentions, (iv) available and appropriate community services for students expressing suicidal intentions, (v) suicide prevention strategies which may be implemented by local schools for students expressing suicidal intentions, (vi) criteria for notification of and discussions with parents of students expressing suicidal intentions, (vii) criteria for as-soon-as-practicable contact with the parents, (viii) appropriate sensitivity to religious beliefs, and (ix) legal requirements and criteria for notification of public service agencies, including, but not limited to, the local or state social services and mental health agencies. These guidelines may include case studies and problem-solving exercises and may be designed as materials for in-service training programs for licensed administrative and instructional personnel.

§ 22.1-319. Definitions.

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

"Board" means the Virginia Board of Education.

"Department" means the Department of Education.

"Person" means any individual, group of individuals, partnership, association, business trust, corporation, or other business entity.

"School for students with disabilities" or "school" or "schools" means a privately owned and operated preschool, school, or educational organization, no matter how titled, maintained or conducting classes for the purpose of offering instruction, for a consideration, profit or tuition, to persons determined to have autism, deaf-blindness, a developmental delay, a hearing impairment including deafness, ~~mental retardation~~ *intellectual disabilities*, multiple disabilities, an orthopedic impairment, other health impairment, an emotional disturbance, a severe disability, a specific learning disability, a speech or language impairment, a traumatic brain injury, or a visual impairment including blindness.

"Superintendent" means the Superintendent of Public Instruction.

§ 23-38.2. Virginia Mental Health and Intellectual Disability Scholarship Fund.

(a) There is hereby established a fund, to be known as the Virginia Mental Health and ~~Mental Retardation~~ *Intellectual Disability* Scholarship Fund, which shall consist of funds appropriated to it from time to time by the General Assembly and which shall be administered by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, for the purpose of providing scholarships for study in various professions and skills that deal with the treatment, training and care of the mentally ill and ~~mentally retarded~~ *intellectually disabled*.

(b) The State Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services Board shall promulgate the necessary rules and regulations, not inconsistent with other laws, for the implementation of this section. Such rules and regulations shall provide:

(1) That scholarships be awarded for a period no longer than one year, but that certain scholarships may be reawarded not more than two times;

(2) That persons who receive such scholarships agree to serve in state employment upon completion of training for a period at least as long as the length of training provided by the scholarship, and that if they do not fulfill this agreement they shall repay to the Commonwealth the amount of the scholarship with interest;

(3) That priorities be given for training in professions and skills where shortages exist and are anticipated in state mental health and ~~mental retardation~~ institutions and facilities for persons with *intellectual disabilities*; and

(4) That priorities be given to citizens of this Commonwealth.

(c) The Commissioner of the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services is hereby authorized to receive gifts, donations, bequests, and federal grants to the Virginia Mental Health and ~~Mental Retardation~~ *Intellectual Disability* Scholarship Fund.

§ 25.1-100. Definitions.

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

"Body determining just compensation" means a jury selected pursuant to § 25.1-229, or the court if a jury is not empanelled.

"Court" means the court having jurisdiction as provided in § 25.1-201.

"Date of valuation" means the time of the lawful taking by the petitioner, or the date of the filing of the petition pursuant to § 25.1-205, whichever occurs first.

4487 "Freeholder" means any person owning an interest in land in fee, including a person owning a  
4488 condominium unit.

4489 "Land" means real estate and all rights and appurtenances thereto, together with the structures and  
4490 other improvements thereon, and any right, title, interest, estate or claim in or to real estate.

4491 "Locality" or "local government" means a county, city, or town, as the context may require.

4492 "Owner" means any person who owns property, provided that the person's ownership of the property  
4493 is of record in the land records of the clerk's office of the circuit court of the county or city where the  
4494 property is located. The term "owner" shall not include trustees or beneficiaries under a deed of trust,  
4495 any person with a security interest in the property, or any person with a judgment or lien against the  
4496 property. This definition of the term "owner" shall not affect in any way the valuation of property.

4497 "Person" means any individual; firm; cooperative; association; corporation; limited liability company;  
4498 trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in  
4499 bankruptcy or any other person acting in a fiduciary or representative capacity, whether appointed by a  
4500 court or otherwise; club, society or other group or combination acting as a unit; the Commonwealth or  
4501 any department, agency or instrumentality thereof; any city, county, town, or other political subdivision  
4502 or any department, agency or instrumentality thereof; or any interstate body to which the  
4503 Commonwealth is a party.

4504 "Petitioner" or "condemnor" means any person who possesses the power to exercise the right of  
4505 eminent domain and who seeks to exercise such power under this chapter. The term "petitioner" or  
4506 "condemnor" includes any person required to make an effort to purchase property as provided in  
4507 § 25.1-204.

4508 "Property" means land and personal property, and any right, title, interest, estate or claim in or to  
4509 such property.

4510 "State institution" means any (i) educational institution enumerated in § 23-14 or (ii) state hospital,  
4511 state training school or state training center for the ~~mentally retarded~~ *intellectually disabled* operated by  
4512 the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse  
4513 Services.

4514 § 29.1-313. Issuance of licenses for use of patients in certain state institutions.

4515 The Director shall have authority to issue at the regular fee, up to twenty-five state resident licenses  
4516 to fish in the name of any state institution operated by the Department of Mental Health, ~~Mental~~  
4517 ~~Retardation~~ *Intellectual Disability* and Substance Abuse Services for use by patients of the institution.

4518 § 32.1-45.1. Deemed consent to testing and release of test results related to infection with human  
4519 immunodeficiency virus or hepatitis B or C viruses.

4520 A. Whenever any health care provider, or any person employed by or under the direction and control  
4521 of a health care provider, is directly exposed to body fluids of a patient in a manner which may,  
4522 according to the then current guidelines of the Centers for Disease Control, transmit human  
4523 immunodeficiency virus or hepatitis B or C viruses, the patient whose body fluids were involved in the  
4524 exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus  
4525 or hepatitis B or C viruses. Such patient shall also be deemed to have consented to the release of such  
4526 test results to the person who was exposed. In other than emergency situations, it shall be the  
4527 responsibility of the health care provider to inform patients of this provision prior to providing them  
4528 with health care services which create a risk of such exposure.

4529 B. Whenever any patient is directly exposed to body fluids of a health care provider, or of any  
4530 person employed by or under the direction and control of a health care provider, in a manner which  
4531 may, according to the then current guidelines of the Centers for Disease Control, transmit human  
4532 immunodeficiency virus or hepatitis B or C viruses, the person whose body fluids were involved in the  
4533 exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus  
4534 or hepatitis B or C viruses. Such person shall also be deemed to have consented to the release of such  
4535 test results to the patient who was exposed.

4536 C. For the purposes of this section, "health care provider" means any person, facility or agency  
4537 licensed or certified to provide care or treatment by the Department of Health, Department of Mental  
4538 Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, Department of  
4539 Rehabilitative Services, or the Department of Social Services, any person licensed or certified by a  
4540 health regulatory board within the Department of Health Professions except for the Boards of Funeral  
4541 Directors and Embalmers and Veterinary Medicine or any personal care agency contracting with the  
4542 Department of Medical Assistance Services.

4543 D. "Health care provider," as defined in subsection C of this section, shall be deemed to include any  
4544 person who renders emergency care or assistance, without compensation and in good faith, at the scene  
4545 of an accident, fire, or any life-threatening emergency, or while en route therefrom to any hospital,  
4546 medical clinic or doctor's office during the period while rendering such emergency care or assistance.  
4547 The Department of Health shall provide appropriate counseling and opportunity for face-to-face  
4548 disclosure of any test results to any such person.

E. Whenever any law-enforcement officer is directly exposed to body fluids of a person in a manner which may, according to the then current guidelines of the Centers for Disease Control, transmit human immunodeficiency virus or hepatitis B or C viruses, the person whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. Such person shall also be deemed to have consented to the release of such test results to the law-enforcement officer who was exposed. In other than emergency situations, it shall be the responsibility of the law-enforcement officer to inform the person of this provision prior to the contact which creates a risk of such exposure.

F. Whenever a person is directly exposed to the body fluids of a law-enforcement officer in a manner which may, according to the then current guidelines of the Centers for Disease Control, transmit human immunodeficiency virus or hepatitis B or C viruses, the law-enforcement officer whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. The law-enforcement officer shall also be deemed to have consented to the release of such test results to the person.

G. For the purposes of this section, "law-enforcement officer" means a person who is both (i) engaged in his public duty at the time of such exposure and (ii) employed by any sheriff's office, any adult or youth correctional facility, or any state or local law-enforcement agency, or any agency or department under the direction and control of the Commonwealth or any local governing body that employs persons who have law-enforcement authority.

H. Whenever any school board employee is directly exposed to body fluids of any person in a manner which may, according to the then current guidelines of the Centers for Disease Control, transmit human immunodeficiency virus or hepatitis B or C viruses, the person whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. Such person shall also be deemed to have consented to the release of such test results to the school board employee who was exposed. In other than emergency situations, it shall be the responsibility of the school board employee to inform the person of this provision prior to the contact that creates a risk of such exposure.

I. Whenever any person is directly exposed to the body fluids of a school board employee in a manner that may, according to the then current guidelines of the Centers for Disease Control, transmit human immunodeficiency virus or hepatitis B or C viruses, the school board employee whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. The school board employee shall also be deemed to have consented to the release of such test results to the person.

J. For the purposes of this section, "school board employee" means a person who is both (i) acting in the course of employment at the time of such exposure and (ii) employed by any local school board in the Commonwealth.

K. For purposes of subsection H, if the person to be tested is a minor, consent for such testing shall be obtained from the parent, guardian, or person standing in loco parentis of such minor prior to initiating such testing. If the parent or guardian or person standing in loco parentis withholds such consent, the school board may petition the juvenile and domestic relations district court in the county or city where the minor resides for an order requiring such testing.

L. Except as provided in subsection K, if the person whose blood specimen is sought for testing refuses to provide such specimen, any person potentially exposed to the human immunodeficiency virus or hepatitis B or C viruses, or the employer of such person, may petition the general district court of the county or city in which the person whose specimen is sought resides or resided, or, in the case of a nonresident, the county or city where the health care provider, law-enforcement agency or school board has its principal office, for an order requiring the person to provide a blood specimen or to submit to testing and to disclose the test results in accordance with this section. At any hearing before the court, the person whose specimen is sought or his counsel may appear. The court shall be advised by the Commissioner or his designee prior to entering any testing order. If a testing order is issued, both the petitioner and the person from whom the blood specimen is sought shall receive counseling and opportunity for face-to-face disclosure of any test results by a licensed practitioner or trained counselor.

§ 32.1-59. Examination and treatment in certain institutions.

Every person admitted to any state correctional institution and every person who is confined to a state hospital for the mentally ill or ~~mentally retarded~~ *intellectually disabled* shall be examined and tested for venereal disease. If any such person is found to be infected with a venereal disease, the person in charge of such institution shall promptly provide treatment and shall report such case as provided in § 32.1-37.

§ 32.1-64.1. Virginia Hearing Impairment Identification and Monitoring System.

A. In order to identify hearing loss at the earliest possible age among newborns and to provide early intervention for all infants so identified as having hearing impairment, the Commissioner shall establish

and maintain the Virginia Hearing Impairment Identification and Monitoring System. This system shall be for the purpose of identifying and monitoring infants with hearing impairment to ensure that such infants receive appropriate early intervention through treatment, therapy, training and education.

B. The Virginia Hearing Impairment Identification and Monitoring System shall be initiated in all hospitals with neonatal intensive care services, in all hospitals in the Commonwealth having newborn nurseries, and in other birthing places or centers in the Commonwealth having newborn nurseries.

C. In all hospitals with neonatal intensive care services, the chief medical officer of such hospitals or his designee shall identify infants at risk of hearing impairment using criteria established by the Board. Beginning on July 1, 1999, all infants shall be given a hearing screening test, regardless of whether or not the infant is at risk of hearing impairment, by the chief medical officer or his designee using methodology approved by the Board. The test shall take place before the infant is discharged from the hospital to the care of the parent or guardian, or as the Board may by regulation provide.

In all other hospitals and other birthing places or centers, the chief medical officer or his designee or the attending practitioner shall identify infants at risk of hearing impairment using criteria established by the Board.

D. Beginning on July 1, 2000, the Board shall provide by regulation for the giving of hearing screening tests for all infants born in all hospitals. The Board's regulations shall establish when the testing shall be offered and performed and procedures for reporting.

An infant whose hearing screening indicates the need for a diagnostic audiological examination shall be offered such examination at a center approved by the Board of Health. As a condition of such approval, such centers shall maintain suitable audiological support and medical and educational referral practices.

E. The Commissioner shall appoint an advisory committee to assist in the design, implementation, and revision of this identification and monitoring system. The advisory committee shall meet at least four times per year. A chairman shall be elected annually by the advisory committee. The Department of Health shall provide support services to the advisory committee. The advisory committee shall consist of representatives from relevant groups including, but not limited to, the health insurance industry; physicians, including at least one pediatrician or family practitioner, one otolaryngologist, and one neonatologist; nurses representing newborn nurseries; audiologists; hearing aid dealers and fitters; teachers of the deaf and hard-of-hearing; parents of children who are deaf or hard-of-hearing; adults who are deaf or hard-of-hearing; hospital administrators; and personnel of appropriate state agencies, including the Department of Medical Assistance Services, the Department of Education, and the Department for the Deaf and Hard-of-Hearing. The Department of Education, the Department for the Deaf and Hard-of-Hearing, and the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services shall cooperate with the Commissioner and the Board in implementing this system.

F. With the assistance of the advisory committee, the Board shall promulgate such rules and regulations as may be necessary to implement this identification and monitoring system. These rules and regulations shall include criteria, including current screening methodology, for the identification of infants (i) with hearing impairment and (ii) at risk of hearing impairment and shall include the scope of the information to be reported, reporting forms, screening protocols, appropriate mechanisms for follow-up, relationships between the identification and monitoring system and other state agency programs or activities and mechanisms for review and evaluation of the activities of the system. The identification and monitoring system shall collect the name, address, sex, race, and any other information determined to be pertinent by the Board, regarding infants determined to be at risk of hearing impairment or to have hearing loss.

G. In addition, the Board's regulations shall provide that any person making a determination that an infant (i) is at risk for hearing impairment, (ii) has failed to pass a hearing screening, or (iii) was not successfully tested shall notify the parent or guardian of the infant, the infant's primary care practitioner, and the Commissioner.

H. No testing required to be performed or offered by this section shall be performed if the parents of the infant object to the test based on their bona fide religious convictions.

§ 32.1-65. Certain newborn screening required.

In order to prevent ~~mental retardation~~ *intellectual disabilities* and permanent disability or death, every infant who is born in the Commonwealth shall be subjected to screening tests for various disorders consistent with, but not necessarily identical to, the uniform condition panel recommended by the American College of Medical Genetics in its report, Newborn Screening: Toward a Uniform Screening Panel and System, that was produced for the U.S. Department of Health and Human Services. Further, upon the issuance of guidance for states' newborn screening programs by the federal Department of Health and Human Services, every infant who is born in the Commonwealth shall be screened for a panel of disorders consistent with, but not necessarily identical to, the federal guidance document.

Any infant whose parent or guardian objects thereto on the grounds that such tests conflict with his

religious practices or tenets shall not be required to receive such screening tests.

The physician or certified nurse midwife in charge of the infant's care after delivery shall cause such tests to be performed. The screening tests shall be performed by the Division of Consolidated Laboratory Services or any other laboratory the Department of Health has contracted with to provide this service.

The program for screening infants for sickle cell diseases shall be conducted in addition to the programs provided for in Article 8 (§ 32.1-68 et seq.) of this chapter.

§ 32.1-73.7. Department to be lead agency for youth suicide prevention.

With such funds as may be appropriated for this purpose, the Department, in consultation with the Department of Education, the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, community services boards and behavioral health authorities, and local departments of health, shall have the lead responsibility for the youth suicide prevention program within the Commonwealth. This responsibility includes coordination of the activities of the agencies of the Commonwealth pertaining to youth suicide prevention in order to develop and carry out comprehensive youth suicide prevention strategies addressing public awareness, the promotion of health development, early identification, intervention and treatment, and support to survivors. The strategies shall be targeted to the specific needs of children and adolescents. The Department shall cooperate with federal, state and local agencies, private and public agencies, survivor groups and other interested persons in order to prevent youth suicide within the Commonwealth.

The provisions of this section shall not limit the powers and duties of other state agencies.

§ 32.1-102.1. Definitions.

As used in this article, unless the context indicates otherwise:

"Certificate" means a certificate of public need for a project required by this article.

"Clinical health service" means a single diagnostic, therapeutic, rehabilitative, preventive or palliative procedure or a series of such procedures that may be separately identified for billing and accounting purposes.

"Health planning region" means a contiguous geographical area of the Commonwealth with a population base of at least 500,000 persons which is characterized by the availability of multiple levels of medical care services, reasonable travel time for tertiary care, and congruence with planning districts.

"Medical care facility," as used in this title, means any institution, place, building or agency, whether or not licensed or required to be licensed by the Board or the State Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services Board, whether operated for profit or nonprofit and whether privately owned or privately operated or owned or operated by a local governmental unit, (i) by or in which health services are furnished, conducted, operated or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more nonrelated mentally or physically sick or injured persons, or for the care of two or more nonrelated persons requiring or receiving medical, surgical or nursing attention or services as acute, chronic, convalescent, aged, physically disabled or crippled or (ii) which is the recipient of reimbursements from third-party health insurance programs or prepaid medical service plans. For purposes of this article, only the following medical care facilities shall be subject to review:

1. General hospitals.

2. Sanitariums.

3. Nursing homes.

4. Intermediate care facilities, except those intermediate care facilities established for the ~~mentally retarded~~ *intellectually disabled* that have no more than 12 beds and are in an area identified as in need of residential services for people with ~~mental retardation~~ *intellectual disabilities* in any plan of the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services.

5. Extended care facilities.

6. Mental hospitals.

7. ~~Mental retardation facilities~~ *Facilities for persons with Intellectual Disability*.

8. Psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts.

9. Specialized centers or clinics or that portion of a physician's office developed for the provision of outpatient or ambulatory surgery, cardiac catheterization, computed tomographic (CT) scanning, gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, radiation therapy, nuclear medicine imaging, except for the purpose of nuclear cardiac imaging, or such other specialty services as may be designated by the Board by regulation.

10. Rehabilitation hospitals.

11. Any facility licensed as a hospital.

The term "medical care facility" shall not include any facility of (i) the Department of Mental Health,

4733 ~~Mental Retardation~~*Intellectual Disability* and Substance Abuse Services; (ii) any nonhospital substance  
 4734 abuse residential treatment program operated by or contracted primarily for the use of a community  
 4735 services board under the Department of Mental Health, ~~Mental Retardation~~*Intellectual Disability* and  
 4736 Substance Abuse Services' Comprehensive Plan; (iii) an intermediate care facility for the ~~mentally~~  
 4737 ~~retarded~~*intellectually disabled* that has no more than 12 beds and is in an area identified as in need of  
 4738 residential services for people with ~~mental retardation~~*intellectual disabilities* in any plan of the  
 4739 Department of Mental Health, ~~Mental Retardation~~*Intellectual Disability* and Substance Abuse Services;  
 4740 (iv) a physician's office, except that portion of a physician's office described above in subdivision 9 of  
 4741 the definition of "medical care facility"; or (v) the Woodrow Wilson Rehabilitation Center of the  
 4742 Department of Rehabilitative Services. "Medical care facility" shall also not include that portion of a  
 4743 physician's office dedicated to providing nuclear cardiac imaging.

4744 "Project" means:

- 4745 1. Establishment of a medical care facility;
- 4746 2. An increase in the total number of beds or operating rooms in an existing medical care facility;
- 4747 3. Relocation at the same site of 10 beds or 10 percent of the beds, whichever is less, from one  
 4748 existing physical facility to another in any two-year period; however, a hospital shall not be required to  
 4749 obtain a certificate for the use of 10 percent of its beds as nursing home beds as provided in § 32.1-132;
- 4750 4. Introduction into an existing medical care facility of any new nursing home service, such as  
 4751 intermediate care facility services, extended care facility services, or skilled nursing facility services,  
 4752 regardless of the type of medical care facility in which those services are provided;
- 4753 5. Introduction into an existing medical care facility of any new cardiac catheterization, computed  
 4754 tomographic (CT) scanning, gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI),  
 4755 magnetic source imaging (MSI), medical rehabilitation, neonatal special care, obstetrical, open heart  
 4756 surgery, positron emission tomographic (PET) scanning, psychiatric, organ or tissue transplant service,  
 4757 radiation therapy, nuclear medicine imaging, except for the purpose of nuclear cardiac imaging,  
 4758 substance abuse treatment, or such other specialty clinical services as may be designated by the Board  
 4759 by regulation, which the facility has never provided or has not provided in the previous 12 months;
- 4760 6. Conversion of beds in an existing medical care facility to medical rehabilitation beds or  
 4761 psychiatric beds;
- 4762 7. The addition by an existing medical care facility of any medical equipment for the provision of  
 4763 cardiac catheterization, computed tomographic (CT) scanning, gamma knife surgery, lithotripsy, magnetic  
 4764 resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron emission  
 4765 tomographic (PET) scanning, radiation therapy, or other specialized service designated by the Board by  
 4766 regulation. Replacement of existing equipment shall not require a certificate of public need; or
- 4767 8. Any capital expenditure of \$15 million or more, not defined as reviewable in subdivisions 1  
 4768 through 7 of this definition, by or in behalf of a medical care facility. However, capital expenditures  
 4769 between \$5 and \$15 million shall be registered with the Commissioner pursuant to regulations developed  
 4770 by the Board. The amounts specified in this subdivision shall be revised effective July 1, 2008, and  
 4771 annually thereafter to reflect inflation using appropriate measures incorporating construction costs and  
 4772 medical inflation.

4773 "Regional health planning agency" means the regional agency, including the regional health planning  
 4774 board, its staff and any component thereof, designated by the Virginia Health Planning Board to perform  
 4775 the health planning activities set forth in this chapter within a health planning region.

4776 "State Medical Facilities Plan" means the planning document adopted by the Board of Health which  
 4777 shall include, but not be limited to, (i) methodologies for projecting need for medical care facility beds  
 4778 and services; (ii) statistical information on the availability of medical care facilities and services; and  
 4779 (iii) procedures, criteria and standards for review of applications for projects for medical care facilities  
 4780 and services.

4781 "Virginia Health Planning Board" means the statewide health planning body established pursuant to  
 4782 § 32.1-122.02 which serves as the analytical and technical resource to the Secretary of Health and  
 4783 Human Resources in matters requiring health analysis and planning.

4784 § 32.1-122.5. Criteria to identify underserved areas.

4785 The Board of Health shall establish criteria to identify medically underserved areas within the  
 4786 Commonwealth. These criteria shall consist of quantifiable measures sensitive to the unique  
 4787 characteristics of urban and rural jurisdictions which may include the incidence of infant mortality, the  
 4788 availability of primary care resources, poverty levels, and other measures indicating the inadequacy of  
 4789 the primary health care system as determined by the Board. The Board shall also include in these  
 4790 criteria the need for medical care services in the state facilities operated by the Departments of  
 4791 Corrections, Juvenile Justice, and Mental Health, ~~Mental Retardation~~*Intellectual Disability* and Substance  
 4792 Abuse Services.

4793 § 32.1-124. Exemptions.

4794 The provisions of §§ 32.1-123 through 32.1-136 shall not be applicable to: (i) a dispensary or

first-aid facility maintained by any commercial or industrial plant, educational institution or convent; (ii) an institution licensed by the State Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services Board; (iii) an institution or portion thereof licensed by the State Board of Social Services; (iv) a hospital or nursing home owned or operated by an agency of the United States government; (v) an office of one or more physicians or surgeons unless such office is used principally for performing surgery; and (vi) a hospital or nursing home, as defined in § 32.1-123, owned or operated by an agency of the Commonwealth unless such hospital or nursing home or portion thereof is certified as a nursing facility pursuant to § 32.1-137.

§ 32.1-125.1. Inspection of hospitals by state agencies generally.

As used in this section unless the context requires a different meaning, "hospital" means a hospital as defined in § 32.1-123 or § 37.2-100.

State agencies shall make or cause to be made only such inspections of hospitals as are necessary to carry out the various obligations imposed on each agency by applicable state and federal laws and regulations. Any on-site inspection by a state agency or a division or unit thereof that substantially complies with the inspection requirements of any other state agency or any other division or unit of the inspecting agency charged with making similar inspections shall be accepted as an equivalent inspection in lieu of an on-site inspection by said agency or by a division or unit of the inspecting agency. A state agency shall coordinate its hospital inspections both internally and with those required by other state agencies so as to ensure that the requirements of this section are met.

Notwithstanding any provision of law to the contrary, all hospitals licensed by the Department of Health or Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services which have been certified under the provisions of Title XVIII of the Social Security Act for hospital or psychiatric services or which have obtained accreditation from the Joint Commission on Accreditation of Healthcare Organizations may be subject to inspections so long as such certification or accreditation is maintained but only to the extent necessary to ensure the public health and safety.

§ 32.1-127.01. Regulations to authorize certain sanctions and guidelines.

The regulations established pursuant to § 32.1-127 shall authorize the Commissioner to initiate court proceedings against nursing homes and certified nursing facilities, except for facilities or units certified as facilities for the ~~mentally retarded~~ *intellectually disabled*. Such proceedings may be initiated by themselves or in conjunction with the administrative sanctions provided in § 32.1-135.

The Board shall promulgate guidelines for the Commissioner to determine when the imposition of administrative sanctions or initiation of court proceedings as specified in § 32.1-27.1, or both, are appropriate in order to ensure prompt correction of violations involving noncompliance with requirements of state or federal law or regulation as discovered on any inspection conducted by the Department of Health pursuant to the provisions of this article or the provisions of Title XVIII or Title XIX of the Social Security Act or as discovered on any inspection conducted by the Department of Medical Assistance Services pursuant to Title XIX of the Social Security Act.

§ 32.1-127.1:03. Health records privacy.

A. There is hereby recognized an individual's right of privacy in the content of his health records. Health records are the property of the health care entity maintaining them, and, except when permitted or required by this section or by other provisions of state law, no health care entity, or other person working in a health care setting, may disclose an individual's health records.

Pursuant to this subsection:

1. Health care entities shall disclose health records to the individual who is the subject of the health record, except as provided in subsections E and F of this section and subsection B of § 8.01-413.

2. Health records shall not be removed from the premises where they are maintained without the approval of the health care entity that maintains such health records, except in accordance with a court order or subpoena consistent with subsection C of § 8.01-413 or with this section or in accordance with the regulations relating to change of ownership of health records promulgated by a health regulatory board established in Title 54.1.

3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health records of an individual, beyond the purpose for which such disclosure was made, without first obtaining the individual's specific authorization to such redisclosure. This redisclosure prohibition shall not, however, prevent (i) any health care entity that receives health records from another health care entity from making subsequent disclosures as permitted under this section and the federal Department of Health and Human Services regulations relating to privacy of the electronic transmission of data and protected health information promulgated by the United States Department of Health and Human Services as required by the Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C. § 1320d et seq.) or (ii) any health care entity from furnishing health records and aggregate or other data, from which individually identifying prescription information has been removed, encoded or encrypted, to qualified researchers, including, but not limited to, pharmaceutical manufacturers and their agents or

4856 contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health  
4857 services research.

4858 B. As used in this section:

4859 "Agent" means a person who has been appointed as an individual's agent under a power of attorney  
4860 for health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.).

4861 "Certification" means a written representation that is delivered by hand, by first-class mail, by  
4862 overnight delivery service, or by facsimile if the sender obtains a facsimile-machine-generated  
4863 confirmation reflecting that all facsimile pages were successfully transmitted.

4864 "Guardian" means a court-appointed guardian of the person.

4865 "Health care clearinghouse" means, consistent with the definition set out in 45 C.F.R. § 160.103, a  
4866 public or private entity, such as a billing service, repricing company, community health management  
4867 information system or community health information system, and "value-added" networks and switches,  
4868 that performs either of the following functions: (i) processes or facilitates the processing of health  
4869 information received from another entity in a nonstandard format or containing nonstandard data content  
4870 into standard data elements or a standard transaction; or (ii) receives a standard transaction from another  
4871 entity and processes or facilitates the processing of health information into nonstandard format or  
4872 nonstandard data content for the receiving entity.

4873 "Health care entity" means any health care provider, health plan or health care clearinghouse.

4874 "Health care provider" means those entities listed in the definition of "health care provider" in  
4875 § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the  
4876 purposes of this section. Health care provider shall also include all persons who are licensed, certified,  
4877 registered or permitted or who hold a multistate licensure privilege issued by any of the health  
4878 regulatory boards within the Department of Health Professions, except persons regulated by the Board of  
4879 Funeral Directors and Embalmers or the Board of Veterinary Medicine.

4880 "Health plan" means an individual or group plan that provides, or pays the cost of, medical care.

4881 "Health plan" shall include any entity included in such definition as set out in 45 C.F.R. § 160.103.

4882 "Health record" means any written, printed or electronically recorded material maintained by a health  
4883 care entity in the course of providing health services to an individual concerning the individual and the  
4884 services provided. "Health record" also includes the substance of any communication made by an  
4885 individual to a health care entity in confidence during or in connection with the provision of health  
4886 services or information otherwise acquired by the health care entity about an individual in confidence  
4887 and in connection with the provision of health services to the individual.

4888 "Health services" means, but shall not be limited to, examination, diagnosis, evaluation, treatment,  
4889 pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind, as well as  
4890 payment or reimbursement for any such services.

4891 "Individual" means a patient who is receiving or has received health services from a health care  
4892 entity.

4893 "Individually identifying prescription information" means all prescriptions, drug orders or any other  
4894 prescription information that specifically identifies an individual.

4895 "Parent" means a biological, adoptive or foster parent.

4896 "Psychotherapy notes" means comments, recorded in any medium by a health care provider who is a  
4897 mental health professional, documenting or analyzing the contents of conversation during a private  
4898 counseling session with an individual or a group, joint, or family counseling session that are separated  
4899 from the rest of the individual's health record. "Psychotherapy notes" shall not include annotations  
4900 relating to medication and prescription monitoring, counseling session start and stop times, treatment  
4901 modalities and frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis,  
4902 functional status, treatment plan, or the individual's progress to date.

4903 C. The provisions of this section shall not apply to any of the following:

4904 1. The status of and release of information governed by §§ 65.2-604 and 65.2-607 of the Virginia  
4905 Workers' Compensation Act;

4906 2. Except where specifically provided herein, the health records of minors; or

4907 3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to  
4908 § 16.1-248.3.

4909 D. Health care entities may, and, when required by other provisions of state law, shall, disclose  
4910 health records:

4911 1. As set forth in subsection E, pursuant to the written authorization of (i) the individual or (ii) in the  
4912 case of a minor, (a) his custodial parent, guardian or other person authorized to consent to treatment of  
4913 minors pursuant to § 54.1-2969 or (b) the minor himself, if he has consented to his own treatment  
4914 pursuant to § 54.1-2969, or (iii) in emergency cases or situations where it is impractical to obtain an  
4915 individual's written authorization, pursuant to the individual's oral authorization for a health care  
4916 provider or health plan to discuss the individual's health records with a third party specified by the  
4917 individual;



2. In compliance with a subpoena issued in accord with subsection H, pursuant to a search warrant or a grand jury subpoena, pursuant to court order upon good cause shown or in compliance with a subpoena issued pursuant to subsection C of § 8.01-413;

3. In accord with subsection F of § 8.01-399 including, but not limited to, situations where disclosure is reasonably necessary to establish or collect a fee or to defend a health care entity or the health care entity's employees or staff against any accusation of wrongful conduct; also as required in the course of an investigation, audit, review or proceedings regarding a health care entity's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity;

4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;

5. In compliance with the provisions of § 8.01-413;

6. As required or authorized by law relating to public health activities, health oversight activities, serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease, public safety, and suspected child or adult abuse reporting requirements, including, but not limited to, those contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-127.1:04, 32.1-276.5, 32.1-283, 32.1-283.1, 37.2-710, 37.2-839, 53.1-40.10, 54.1-2400.6, 54.1-2400.7, 54.1-2403.3, 54.1-2506, 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 63.2-1509, and 63.2-1606;

7. Where necessary in connection with the care of the individual;

8. In connection with the health care entity's own health care operations or the health care operations of another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in accordance with accepted standards of practice within the health services setting; however, the maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a pharmacy registered or permitted in Virginia shall only be accomplished in compliance with §§ 54.1-3410, 54.1-3411, and 54.1-3412;

9. When the individual has waived his right to the privacy of the health records;

10. When examination and evaluation of an individual are undertaken pursuant to judicial or administrative law order, but only to the extent as required by such order;

11. To the guardian ad litem and any attorney representing the respondent in the course of a guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 10 (§ 37.2-1000 et seq.) of Title 37.2;

12. To the attorney appointed by the court to represent an individual who is or has been a patient who is the subject of a civil commitment proceeding under Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2 or a judicial authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of Title 37.2;

13. To the attorney and/or guardian ad litem of a minor who represents such minor in any judicial or administrative proceeding, if the court or administrative hearing officer has entered an order granting the attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the health care entity of such order;

14. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's health records in accord with § 9.1-156;

15. To an agent appointed under an individual's power of attorney or to an agent or decision maker designated in an individual's advance directive for health care or for decisions on anatomical gifts and organ, tissue or eye donation or to any other person consistent with the provisions of the Health Care Decisions Act (§ 54.1-2981 et seq.);

16. To third-party payors and their agents for purposes of reimbursement;

17. As is necessary to support an application for receipt of health care benefits from a governmental agency or as required by an authorized governmental agency reviewing such application or reviewing benefits already provided or as necessary to the coordination of prevention and control of disease, injury, or disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;

18. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;

19. In accord with subsection B of § 54.1-2400.1, to communicate an individual's specific and immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;

20. Where necessary in connection with the implementation of a hospital's routine contact process for organ donation pursuant to subdivision B 4 of § 32.1-127;

21. In the case of substance abuse records, when permitted by and in conformity with requirements of federal law found in 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2;

22. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the adequacy or quality of professional services or the competency and qualifications for professional staff privileges;

23. If the health records are those of a deceased or mentally incapacitated individual to the personal representative or executor of the deceased individual or the legal guardian or committee of the

incompetent or incapacitated individual or if there is no personal representative, executor, legal guardian or committee appointed, to the following persons in the following order of priority: a spouse, an adult son or daughter, either parent, an adult brother or sister, or any other relative of the deceased individual in order of blood relationship;

24. For the purpose of conducting record reviews of inpatient hospital deaths to promote identification of all potential organ, eye, and tissue donors in conformance with the requirements of applicable federal law and regulations, including 42 C.F.R. § 482.45, (i) to the health care provider's designated organ procurement organization certified by the United States Health Care Financing Administration and (ii) to any eye bank or tissue bank in Virginia certified by the Eye Bank Association of America or the American Association of Tissue Banks;

25. To the Office of the Inspector General for Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services pursuant to Article 3 (§ 37.2-423 et seq.) of Chapter 4 of Title 37.2;

26. To an entity participating in the activities of a local health partnership authority established pursuant to Article 6.1 (§ 32.1-122.10:001 et seq.) of Chapter 4 of this title, pursuant to subdivision 1 of this subsection;

27. To law-enforcement officials by each licensed emergency medical services agency, (i) when the individual is the victim of a crime or (ii) when the individual has been arrested and has received emergency medical services or has refused emergency medical services and the health records consist of the prehospital patient care report required by § 32.1-116.1;

28. To law-enforcement officials, in response to their request, for the purpose of identifying or locating a suspect, fugitive, person required to register pursuant to § 9.1-901 of the Sex Offender and Crimes Against Minors Registry Act, material witness, or missing person, provided that only the following information may be disclosed: (i) name and address of the person, (ii) date and place of birth of the person, (iii) social security number of the person, (iv) blood type of the person, (v) date and time of treatment received by the person, (vi) date and time of death of the person, where applicable, (vii) description of distinguishing physical characteristics of the person, and (viii) type of injury sustained by the person.

29. To law-enforcement officials regarding the death of an individual for the purpose of alerting law enforcement of the death if the health care entity has a suspicion that such death may have resulted from criminal conduct;

30. To law-enforcement officials if the health care entity believes in good faith that the information disclosed constitutes evidence of a crime that occurred on its premises;

31. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title; and

32. To the Commissioner of the Department of Labor and Industry or his designee by each licensed emergency medical services agency when the records consist of the prehospital patient care report required by § 32.1-116.1 and the patient has suffered an injury or death on a work site while performing duties or tasks that are within the scope of his employment.

Notwithstanding the provisions of subdivisions 1 through 32 of this subsection, a health care entity shall obtain an individual's written authorization for any disclosure of psychotherapy notes, except when disclosure by the health care entity is (i) for its own training programs in which students, trainees, or practitioners in mental health are being taught under supervision to practice or to improve their skills in group, joint, family, or individual counseling; (ii) to defend itself or its employees or staff against any accusation of wrongful conduct; (iii) in the discharge of the duty, in accordance with subsection B of § 54.1-2400.1, to take precautions to protect third parties from violent behavior or other serious harm; (iv) required in the course of an investigation, audit, review, or proceeding regarding a health care entity's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity; or (v) otherwise required by law.

E. Requests for copies of health records shall (i) be in writing, dated and signed by the requester; (ii) identify the nature of the information requested; and (iii) include evidence of the authority of the requester to receive such copies and identification of the person to whom the information is to be disclosed. The health care entity shall accept a photocopy, facsimile, or other copy of the original signed by the requestor as if it were an original. Within 15 days of receipt of a request for copies of health records, the health care entity shall do one of the following: (i) furnish such copies to any requester authorized to receive them; (ii) inform the requester if the information does not exist or cannot be found; (iii) if the health care entity does not maintain a record of the information, so inform the requester and provide the name and address, if known, of the health care entity who maintains the record; or (iv) deny the request (a) under subsection F, (b) on the grounds that the requester has not established his authority to receive such health records or proof of his identity, or (c) as otherwise provided by law. Procedures set forth in this section shall apply only to requests for health records not

specifically governed by other provisions of state law.

F. Except as provided in subsection B of § 8.01-413, copies of an individual's health records shall not be furnished to such individual or anyone authorized to act on the individual's behalf when the individual's treating physician or the individual's treating clinical psychologist has made a part of the individual's record a written statement that, in the exercise of his professional judgment, the furnishing to or review by the individual of such health records would be reasonably likely to endanger the life or physical safety of the individual or another person, or that such health record makes reference to a person other than a health care provider and the access requested would be reasonably likely to cause substantial harm to such referenced person. If any health care entity denies a request for copies of health records based on such statement, the health care entity shall inform the individual of the individual's right to designate, in writing, at his own expense, another reviewing physician or clinical psychologist, whose licensure, training and experience relative to the individual's condition are at least equivalent to that of the physician or clinical psychologist upon whose opinion the denial is based. The designated reviewing physician or clinical psychologist shall make a judgment as to whether to make the health record available to the individual.

The health care entity denying the request shall also inform the individual of the individual's right to request in writing that such health care entity designate, at its own expense, a physician or clinical psychologist, whose licensure, training, and experience relative to the individual's condition are at least equivalent to that of the physician or clinical psychologist upon whose professional judgment the denial is based and who did not participate in the original decision to deny the health records, who shall make a judgment as to whether to make the health record available to the individual. The health care entity shall comply with the judgment of the reviewing physician or clinical psychologist. The health care entity shall permit copying and examination of the health record by such other physician or clinical psychologist designated by either the individual at his own expense or by the health care entity at its expense.

Any health record copied for review by any such designated physician or clinical psychologist shall be accompanied by a statement from the custodian of the health record that the individual's treating physician or clinical psychologist determined that the individual's review of his health record would be reasonably likely to endanger the life or physical safety of the individual or would be reasonably likely to cause substantial harm to a person referenced in the health record who is not a health care provider.

Further, nothing herein shall be construed as giving, or interpreted to bestow the right to receive copies of, or otherwise obtain access to, psychotherapy notes to any individual or any person authorized to act on his behalf.

G. A written authorization to allow release of an individual's health records shall substantially include the following information:

#### AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

Individual's Name .....

Health Care Entity's Name .....

Person, Agency, or Health Care Entity to whom disclosure is to be made .....

Information or Health Records to be disclosed .....

Purpose of Disclosure or at the Request of the Individual .....

As the person signing this authorization, I understand that I am giving my permission to the above-named health care entity for disclosure of

confidential health records. I understand that the health care entity may not condition treatment or payment on my willingness to sign this authorization

unless the specific circumstances under which such conditioning is permitted by law are applicable and are set forth in this authorization. I also

understand that I have the right to revoke this authorization at any time, but that my revocation is not effective until delivered in writing to the person

who is in possession of my health records and is not effective as to health records already disclosed under this authorization. A copy of this

authorization and a notation concerning the persons or agencies to whom

disclosure was made shall be included with my original health records. I

understand that health information disclosed under this authorization might be redisclosed by a recipient and may, as a result of such disclosure, no longer

be protected to the same extent as such health information was protected by law while solely in the possession of the health care entity.

This authorization expires on (date) or (event) .....

5100 Signature of Individual or Individual's Legal Representative if Individual is  
5101 Unable to Sign .....  
5102 Relationship or Authority of Legal Representative .....  
5103 Date of Signature .....

5104 H. Pursuant to this subsection:

5105 1. Unless excepted from these provisions in subdivision 9 of this subsection, no party to a civil,  
5106 criminal or administrative action or proceeding shall request the issuance of a subpoena duces tecum for  
5107 another party's health records or cause a subpoena duces tecum to be issued by an attorney unless a  
5108 copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the other  
5109 party's counsel or to the other party if pro se, simultaneously with filing the request or issuance of the  
5110 subpoena. No party to an action or proceeding shall request or cause the issuance of a subpoena duces  
5111 tecum for the health records of a nonparty witness unless a copy of the request for the subpoena or a  
5112 copy of the attorney-issued subpoena is provided to the nonparty witness simultaneously with filing the  
5113 request or issuance of the attorney-issued subpoena.

5114 No subpoena duces tecum for health records shall set a return date earlier than 15 days from the date  
5115 of the subpoena except by order of a court or administrative agency for good cause shown. When a  
5116 court or administrative agency directs that health records be disclosed pursuant to a subpoena duces  
5117 tecum earlier than 15 days from the date of the subpoena, a copy of the order shall accompany the  
5118 subpoena.

5119 Any party requesting a subpoena duces tecum for health records or on whose behalf the subpoena  
5120 duces tecum is being issued shall have the duty to determine whether the individual whose health  
5121 records are being sought is pro se or a nonparty.

5122 In instances where health records being subpoenaed are those of a pro se party or nonparty witness,  
5123 the party requesting or issuing the subpoena shall deliver to the pro se party or nonparty witness  
5124 together with the copy of the request for subpoena, or a copy of the subpoena in the case of an  
5125 attorney-issued subpoena, a statement informing them of their rights and remedies. The statement shall  
5126 include the following language and the heading shall be in boldface capital letters:

5127 **NOTICE TO INDIVIDUAL**

5128 The attached document means that (insert name of party requesting or causing issuance of the  
5129 subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has  
5130 been issued by the other party's attorney to your doctor, other health care providers (names of health  
5131 care providers inserted here) or other health care entity (name of health care entity to be inserted here)  
5132 requiring them to produce your health records. Your doctor, other health care provider or other health  
5133 care entity is required to respond by providing a copy of your health records. If you believe your health  
5134 records should not be disclosed and object to their disclosure, you have the right to file a motion with  
5135 the clerk of the court or the administrative agency to quash the subpoena. If you elect to file a motion  
5136 to quash, such motion must be filed within 15 days of the date of the request or of the attorney-issued  
5137 subpoena. You may contact the clerk's office or the administrative agency to determine the requirements  
5138 that must be satisfied when filing a motion to quash and you may elect to contact an attorney to  
5139 represent your interest. If you elect to file a motion to quash, you must notify your doctor, other health  
5140 care provider(s), or other health care entity, that you are filing the motion so that the health care  
5141 provider or health care entity knows to send the health records to the clerk of court or administrative  
5142 agency in a sealed envelope or package for safekeeping while your motion is decided.

5143 2. Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued  
5144 for an individual's health records shall include a Notice in the same part of the request in which the  
5145 recipient of the subpoena duces tecum is directed where and when to return the health records. Such  
5146 notice shall be in boldface capital letters and shall include the following language:

5147 **NOTICE TO HEALTH CARE ENTITIES**

5148 A COPY OF THIS SUBPOENA DUCES TECUM HAS BEEN PROVIDED TO THE INDIVIDUAL  
5149 WHOSE HEALTH RECORDS ARE BEING REQUESTED OR HIS COUNSEL. YOU OR THAT  
5150 INDIVIDUAL HAS THE RIGHT TO FILE A MOTION TO QUASH (OBJECT TO) THE ATTACHED  
5151 SUBPOENA. IF YOU ELECT TO FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION  
5152 WITHIN 15 DAYS OF THE DATE OF THIS SUBPOENA.

5153 YOU MUST NOT RESPOND TO THIS SUBPOENA UNTIL YOU HAVE RECEIVED WRITTEN  
5154 CERTIFICATION FROM THE PARTY ON WHOSE BEHALF THE SUBPOENA WAS ISSUED  
5155 THAT THE TIME FOR FILING A MOTION TO QUASH HAS ELAPSED AND THAT:

5156 NO MOTION TO QUASH WAS FILED; OR

5157 ANY MOTION TO QUASH HAS BEEN RESOLVED BY THE COURT OR THE  
5158 ADMINISTRATIVE AGENCY AND THE DISCLOSURES SOUGHT ARE CONSISTENT WITH  
5159 SUCH RESOLUTION.

5160 IF YOU RECEIVE NOTICE THAT THE INDIVIDUAL WHOSE HEALTH RECORDS ARE

BEING REQUESTED HAS FILED A MOTION TO QUASH THIS SUBPOENA, OR IF YOU FILE A MOTION TO QUASH THIS SUBPOENA, YOU MUST SEND THE HEALTH RECORDS ONLY TO THE CLERK OF THE COURT OR ADMINISTRATIVE AGENCY THAT ISSUED THE SUBPOENA OR IN WHICH THE ACTION IS PENDING AS SHOWN ON THE SUBPOENA USING THE FOLLOWING PROCEDURE:

PLACE THE HEALTH RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED ENVELOPE A COVER LETTER TO THE CLERK OF COURT OR ADMINISTRATIVE AGENCY WHICH STATES THAT CONFIDENTIAL HEALTH RECORDS ARE ENCLOSED AND ARE TO BE HELD UNDER SEAL PENDING A RULING ON THE MOTION TO QUASH THE SUBPOENA. THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT OR ADMINISTRATIVE AGENCY.

3. Upon receiving a valid subpoena duces tecum for health records, health care entities shall have the duty to respond to the subpoena in accordance with the provisions of subdivisions 4, 5, 6, 7, and 8 of this subsection.

4. Except to deliver to a clerk of the court or administrative agency subpoenaed health records in a sealed envelope as set forth, health care entities shall not respond to a subpoena duces tecum for such health records until they have received a certification as set forth in subdivision 5 or 8 of this subsection from the party on whose behalf the subpoena duces tecum was issued.

If the health care entity has actual receipt of notice that a motion to quash the subpoena has been filed or if the health care entity files a motion to quash the subpoena for health records, then the health care entity shall produce the health records, in a securely sealed envelope, to the clerk of the court or administrative agency issuing the subpoena or in whose court or administrative agency the action is pending. The court or administrative agency shall place the health records under seal until a determination is made regarding the motion to quash. The securely sealed envelope shall only be opened on order of the judge or administrative agency. In the event the court or administrative agency grants the motion to quash, the health records shall be returned to the health care entity in the same sealed envelope in which they were delivered to the court or administrative agency. In the event that a judge or administrative agency orders the sealed envelope to be opened to review the health records in camera, a copy of the order shall accompany any health records returned to the health care entity. The health records returned to the health care entity shall be in a securely sealed envelope.

5. If no motion to quash is filed within 15 days of the date of the request or of the attorney-issued subpoena, the party on whose behalf the subpoena was issued shall have the duty to certify to the subpoenaed health care entity that the time for filing a motion to quash has elapsed and that no motion to quash was filed. Any health care entity receiving such certification shall have the duty to comply with the subpoena duces tecum by returning the specified health records by either the return date on the subpoena or five days after receipt of the certification, whichever is later.

6. In the event that the individual whose health records are being sought files a motion to quash the subpoena, the court or administrative agency shall decide whether good cause has been shown by the discovering party to compel disclosure of the individual's health records over the individual's objections. In determining whether good cause has been shown, the court or administrative agency shall consider (i) the particular purpose for which the information was collected; (ii) the degree to which the disclosure of the records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the disclosure on the individual's future health care; (iv) the importance of the information to the lawsuit or proceeding; and (v) any other relevant factor.

7. Concurrent with the court or administrative agency's resolution of a motion to quash, if subpoenaed health records have been submitted by a health care entity to the court or administrative agency in a sealed envelope, the court or administrative agency shall: (i) upon determining that no submitted health records should be disclosed, return all submitted health records to the health care entity in a sealed envelope; (ii) upon determining that all submitted health records should be disclosed, provide all the submitted health records to the party on whose behalf the subpoena was issued; or (iii) upon determining that only a portion of the submitted health records should be disclosed, provide such portion to the party on whose behalf the subpoena was issued and return the remaining health records to the health care entity in a sealed envelope.

8. Following the court or administrative agency's resolution of a motion to quash, the party on whose behalf the subpoena duces tecum was issued shall have the duty to certify in writing to the subpoenaed health care entity a statement of one of the following:

a. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are consistent with such resolution; and, therefore, the health records previously delivered in a sealed envelope to the clerk of the court or administrative agency will not be returned to the health care entity;

5222 b. All filed motions to quash have been resolved by the court or administrative agency and the  
5223 disclosures sought in the subpoena duces tecum are consistent with such resolution and that, since no  
5224 health records have previously been delivered to the court or administrative agency by the health care  
5225 entity, the health care entity shall comply with the subpoena duces tecum by returning the health records  
5226 designated in the subpoena by the return date on the subpoena or five days after receipt of certification,  
5227 whichever is later;

5228 c. All filed motions to quash have been resolved by the court or administrative agency and the  
5229 disclosures sought in the subpoena duces tecum are not consistent with such resolution; therefore, no  
5230 health records shall be disclosed and all health records previously delivered in a sealed envelope to the  
5231 clerk of the court or administrative agency will be returned to the health care entity;

5232 d. All filed motions to quash have been resolved by the court or administrative agency and the  
5233 disclosures sought in the subpoena duces tecum are not consistent with such resolution and that only  
5234 limited disclosure has been authorized. The certification shall state that only the portion of the health  
5235 records as set forth in the certification, consistent with the court or administrative agency's ruling, shall  
5236 be disclosed. The certification shall also state that health records that were previously delivered to the  
5237 court or administrative agency for which disclosure has been authorized will not be returned to the  
5238 health care entity; however, all health records for which disclosure has not been authorized will be  
5239 returned to the health care entity; or

5240 e. All filed motions to quash have been resolved by the court or administrative agency and the  
5241 disclosures sought in the subpoena duces tecum are not consistent with such resolution and, since no  
5242 health records have previously been delivered to the court or administrative agency by the health care  
5243 entity, the health care entity shall return only those health records specified in the certification,  
5244 consistent with the court or administrative agency's ruling, by the return date on the subpoena or five  
5245 days after receipt of the certification, whichever is later.

5246 A copy of the court or administrative agency's ruling shall accompany any certification made  
5247 pursuant to this subdivision.

5248 9. The provisions of this subsection have no application to subpoenas for health records requested  
5249 under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation,  
5250 audit, review or proceedings regarding a health care entity's conduct.

5251 The provisions of this subsection shall apply to subpoenas for the health records of both minors and  
5252 adults.

5253 Nothing in this subsection shall have any effect on the existing authority of a court or administrative  
5254 agency to issue a protective order regarding health records, including, but not limited to, ordering the  
5255 return of health records to a health care entity, after the period for filing a motion to quash has passed.

5256 A subpoena for substance abuse records must conform to the requirements of federal law found in 42  
5257 C.F.R. Part 2, Subpart E.

5258 I. Health care entities may testify about the health records of an individual in compliance with  
5259 §§ 8.01-399 and 8.01-400.2.

5260 J. If an individual requests a copy of his health record from a health care entity, the health care  
5261 entity may impose a reasonable cost-based fee, which shall include only the cost of supplies for and  
5262 labor of copying the requested information, postage when the individual requests that such information  
5263 be mailed, and preparation of an explanation or summary of such information as agreed to by the  
5264 individual. For the purposes of this section, "individual" shall subsume a person with authority to act on  
5265 behalf of the individual who is the subject of the health record in making decisions related to his health  
5266 care.

5267 § 32.1-127.1:04. Use or disclosure of certain protected health information required.

5268 A. The coordination of prevention and control of disease, injury, or disability and the delivery of  
5269 health care benefits are hereby declared to be (i) necessary public health activities; (ii) necessary health  
5270 oversight activities for the integrity of the health care system; and (iii) necessary to prevent serious harm  
5271 and serious threats to the health and safety of individuals and the public.

5272 B. The Departments of Health, Medical Assistance Services, Mental Health, ~~Mental~~  
5273 ~~Retardation~~ *Intellectual Disability* and Substance Abuse Services, Rehabilitative Services, and Social  
5274 Services, and the Departments for the Aging, the Blind and Vision Impaired, and the Deaf and  
5275 Hard-of-Hearing, or any successors in interest thereof shall establish a secure system for sharing  
5276 protected health information that may be necessary for the coordination of prevention and control of  
5277 disease, injury, or disability and for the delivery of health care benefits when such protected information  
5278 concerns individuals who (i) have contracted a reportable disease, including exposure to a toxic  
5279 substance, as required by the Board of Health pursuant to § 32.1-35 or other disease or disability  
5280 required to be reported by law; (ii) are the subjects of public health surveillance, public health  
5281 investigations, or public health interventions or are applicants for or recipients of medical assistance  
5282 services; (iii) have been or are the victims of child abuse or neglect or domestic violence; or (iv) may  
5283 present a serious threat to health or safety of a person or the public or may be subject to a serious threat

to their health or safety. For the purposes of this section, "public health interventions" shall include the services provided through the Department of Rehabilitative Services, and the Departments for the Aging, the Blind and Vision Impaired, and the Deaf and Hard-of-Hearing, or any successors in interest thereof.

Pursuant to the regulations concerning patient privacy promulgated by the federal Department of Health and Human Services, covered entities may disclose protected health information to the secure system without obtaining consent or authorization for such disclosure. Such protected health information shall be used exclusively for the purposes established in this section.

C. The Office of the Attorney General shall advise the Departments of Health, Medical Assistance Services, Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, Rehabilitative Services, and Social Services and the Departments for the Aging, the Blind and Vision Impaired, and the Deaf and Hard-of-Hearing, or any successors in interest thereof in the implementation of this section.

§ 32.1-135.2. Offer or payment of remuneration in exchange for referral prohibited.

No hospital licensed pursuant to this chapter shall knowingly and willfully offer or pay any remuneration directly or indirectly, in cash or in kind, to induce any practitioner of the healing arts or any clinical psychologist to refer an individual or individuals to such hospital. The Board shall adopt regulations as necessary to carry out the provisions of this section. Such regulations shall be developed in conjunction with the State Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services Board and shall be consistent with regulations adopted by such Board pursuant to § 37.2-420. Such regulations shall exclude from the definition of "remuneration" any payments, business arrangements, or payment practices not prohibited by 42 U.S.C. § 1320a, as amended, or any regulations promulgated pursuant thereto.

§ 32.1-276.3. Definitions.

As used in this chapter:

"Board" means the Board of Health.

"Consumer" means any person (i) whose occupation is other than the administration of health activities or the provision of health services, (ii) who has no fiduciary obligation to a health care institution or other health agency or to any organization, public or private, whose principal activity is an adjunct to the provision of health services, or (iii) who has no material financial interest in the rendering of health services.

"Health care provider" means (i) a general hospital, ordinary hospital, outpatient surgical hospital, nursing home or certified nursing facility licensed or certified pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of this title; (ii) a mental or psychiatric hospital licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2; (iii) a hospital operated by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services; (iv) a hospital operated by the University of Virginia or the Virginia Commonwealth University Health System Authority; (v) any person licensed to practice medicine or osteopathy in the Commonwealth pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1; (vi) any person licensed to furnish health care policies or plans pursuant to Chapter 34 (§ 38.2-3400 et seq.), Chapter 42 (§ 38.2-4200), or Chapter 43 (§ 38.2-4300) of Title 38.2; or (vii) any person licensed to practice dentistry pursuant to Chapter 27 (§ 54.1-2700 et seq.) of Title 54.1 who is registered with the Board of Dentistry as an oral and maxillofacial surgeon and certified by the Board of Dentistry to perform certain procedures pursuant to § 54.1-2709.1. In no event shall such term be construed to include continuing care retirement communities which file annual financial reports with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 or any nursing care facility of a religious body which depends upon prayer alone for healing.

"Health maintenance organization" means any person who undertakes to provide or to arrange for one or more health care plans pursuant to Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2.

"Inpatient hospital" means a hospital providing inpatient care and licensed pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of this title, a hospital licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2, a hospital operated by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services for the care and treatment of the mentally ill, or a hospital operated by the University of Virginia or the Virginia Commonwealth University Health System Authority.

"Nonprofit organization" means a nonprofit, tax-exempt health data organization with the characteristics, expertise, and capacity to execute the powers and duties set forth for such entity in this chapter.

"Oral and maxillofacial surgeon" means, for the purposes of this chapter, a person who is licensed to practice dentistry in Virginia, registered with the Board of Dentistry as an oral and maxillofacial surgeon, and certified to perform certain procedures pursuant to § 54.1-2709.1.

"Oral and maxillofacial surgeon's office" means a place (i) owned or operated by a licensed and registered oral and maxillofacial surgeon who is certified to perform certain procedures pursuant to

§ 54.1-2709.1 or by a group of oral and maxillofacial surgeons, at least one of whom is so certified, practicing in any legal form whatsoever or by a corporation, partnership, limited liability company or other entity that employs or engages at least one oral and maxillofacial surgeon who is so certified, and (ii) designed and equipped for the provision of oral and maxillofacial surgery services to ambulatory patients.

"Outpatient surgery" means all surgical procedures performed on an outpatient basis in a general hospital, ordinary hospital, outpatient surgical hospital or other facility licensed or certified pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of this title or in a physician's office or oral and maxillofacial surgeon's office, as defined above. Outpatient surgery refers only to those surgical procedure groups on which data are collected by the nonprofit organization as a part of a pilot study.

"Physician" means a person licensed to practice medicine or osteopathy in the Commonwealth pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1.

"Physician's office" means a place (i) owned or operated by a licensed physician or group of physicians practicing in any legal form whatsoever or by a corporation, partnership, limited liability company or other entity that employs or engages physicians, and (ii) designed and equipped solely for the provision of fundamental medical care, whether diagnostic, therapeutic, rehabilitative, preventive or palliative, to ambulatory patients.

"Surgical procedure group" means at least five procedure groups, identified by the nonprofit organization designated pursuant to § 32.1-276.4 in compliance with regulations adopted by the Board, based on criteria that include, but are not limited to, the frequency with which the procedure is performed, the clinical severity or intensity, and the perception or probability of risk. The nonprofit organization shall form a technical advisory group consisting of members nominated by its Board of Directors' nominating organizations to assist in selecting surgical procedure groups to recommend to the Board for adoption.

"System" means the Virginia Patient Level Data System.

§ 32.1-276.8. Fees for processing, verification, and dissemination of data.

A. The Board shall prescribe a reasonable fee for each affected health care provider to cover the costs of the reasonable expenses of establishing and administering the methodology developed pursuant to § 32.1-276.7. The payment of such fees shall be at such time as the Board designates. The Board may assess a late charge on any fees paid after their due date.

In addition, the Board shall prescribe a tiered-fee structure based on the number of enrollees for each health maintenance organization to cover the costs of collecting and making available such data. Such fees shall not exceed \$3,000 for each health maintenance organization required to provide information pursuant to this chapter. The payment of such fees shall also be at such time as the Board designates. The Board may also assess a late charge on any fees paid by health maintenance organizations after their due dates.

B. Except for the fees assessed pursuant to subsection A, the nonprofit organization providing services pursuant to an agreement or contract as provided in § 32.1-276.4 shall not assess any fee against any health care provider that submits data under this chapter that is processed, verified, and timely in accordance with standards established by the Board. The Board shall establish penalties for submission of data in a manner that is inconsistent with such standards.

C. State agencies shall not be assessed fees for the submission of patient level data required by subsection C of § 32.1-276.6. Individual employers, insurers, and other organizations may voluntarily provide the nonprofit organization with outpatient data for processing, storage, and comparative analysis and shall be subject to fees negotiated with and charged by the nonprofit organization for services provided.

D. The nonprofit organization providing services pursuant to an agreement or contract with the Commissioner of Health shall be authorized to charge and collect reasonable fees for the dissemination of patient level data and Health Employer Data and Information Set (HEDIS) data or other approved quality of care or performance information set data; however, the Commissioner of Health, the State Corporation Commission, and the Commissioner of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services shall be entitled to receive relevant and appropriate data from the nonprofit organization at no charge.

E. The Board shall (i) maintain records of its activities; (ii) collect and account for all fees and deposit the moneys so collected into a special fund from which the expenses attributed to this chapter shall be paid; and (iii) enforce all regulations promulgated by it pursuant to this chapter.

§ 32.1-238. Impounding sources of ionizing radiation.

The Commissioner is authorized, in the event of an emergency constituting a hazard to the public health and safety, to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this article or any regulations issued thereunder.

§ 32.1-283.1. State Child Fatality Review Team established; membership; access to and maintenance



of records; confidentiality; etc.

A. There is hereby created the State Child Fatality Review Team, hereinafter referred to as the "Team," which shall develop and implement procedures to ensure that child deaths occurring in Virginia are analyzed in a systematic way. The Team shall review (i) violent and unnatural child deaths, (ii) sudden child deaths occurring within the first 18 months of life, and (iii) those fatalities for which the cause or manner of death was not determined with reasonable medical certainty. No child death review shall be initiated by the Team until conclusion of any law-enforcement investigation or criminal prosecution. The Team shall (i) develop and revise as necessary operating procedures for the review of child deaths, including identification of cases to be reviewed and procedures for coordination among the agencies and professionals involved, (ii) improve the identification, data collection, and record keeping of the causes of child death, (iii) recommend components for prevention and education programs, (iv) recommend training to improve the investigation of child deaths, and (v) provide technical assistance, upon request, to any local child fatality teams that may be established. The operating procedures for the review of child deaths shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision 17 of subsection B of § 2.2-4002.

B. The 16-member Team shall be chaired by the Chief Medical Examiner and shall be composed of the following persons or their designees: the Commissioner of the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services; the Director of Child Protective Services within the Department of Social Services; the Superintendent of Public Instruction; the State Registrar of Vital Records; and the Director of the Department of Criminal Justice Services. In addition, one representative from each of the following entities shall be appointed by the Governor to serve for a term of three years: local law-enforcement agencies, local fire departments, local departments of social services, the Medical Society of Virginia, the Virginia College of Emergency Physicians, the Virginia Pediatric Society, Virginia Sudden Infant Death Syndrome Alliance, local emergency medical services personnel, Commonwealth's attorneys, and community services boards.

C. Upon the request of the Chief Medical Examiner in his capacity as chair of the Team, made after the conclusion of any law-enforcement investigation or prosecution, information and records regarding a child whose death is being reviewed by the Team may be inspected and copied by the Chief Medical Examiner or his designee, including, but not limited to, any report of the circumstances of the event maintained by any state or local law-enforcement agency or medical examiner, and information or records maintained on such child by any school, social services agency or court. Information, records or reports maintained by any Commonwealth's Attorney shall be made available for inspection and copying by the Chief Medical Examiner pursuant to procedures which shall be developed by the Chief Medical Examiner and the Commonwealth's Attorneys' Services Council established by § 2.2-2617. Any presentence report prepared pursuant to § 19.2-299 for any person convicted of a crime that led to the death of the child shall be made available for inspection and copying by the Chief Medical Examiner pursuant to procedures which shall be developed by the Chief Medical Examiner. In addition, the Chief Medical Examiner may inspect and copy from any Virginia health care provider, on behalf of the Team, (i) without obtaining consent, the health and mental health records of the child and those perinatal medical records of the child's mother that related to such child and (ii) upon obtaining consent from each adult regarding his personal records, or from a parent regarding the records of a minor child, the health and mental health records of the child's family. All such information and records shall be confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision 9 of § 2.2-3705.5. Upon the conclusion of the child death review, all information and records concerning the child and the child's family shall be shredded or otherwise destroyed by the Chief Medical Examiner in order to ensure confidentiality. Such information or records shall not be subject to subpoena or discovery or be admissible in any criminal or civil proceeding. If available from other sources, however, such information and records shall not be immune from subpoena, discovery or introduction into evidence when obtained through such other sources solely because the information and records were presented to the Team during a child death review. Further, the findings of the Team may be disclosed or published in statistical or other form which shall not identify individuals. The portions of meetings in which individual child death cases are discussed by the Team shall be closed pursuant to subdivision A 21 of § 2.2-3711. In addition to the requirements of § 2.2-3712, all team members, persons attending closed team meetings, and persons presenting information and records on specific child deaths to the Team during closed meetings shall execute a sworn statement to honor the confidentiality of the information, records, discussions, and opinions disclosed during any closed meeting to review a specific child death. Violations of this subsection shall be punishable as a Class 3 misdemeanor.

D. Upon notification of a child death, any state or local government agency maintaining records on such child or such child's family which are periodically purged shall retain such records for the longer of 12 months or until such time as the State Child Fatality Review Team has completed its child death

5468 review of the specific case.

5469 E. The Team shall compile annual data which shall be made available to the Governor and the  
5470 General Assembly as requested. These statistical data compilations shall not contain any personally  
5471 identifying information and shall be public records.

5472 § 32.1-325. Board to submit plan for medical assistance services to Secretary of Health and Human  
5473 Services pursuant to federal law; administration of plan; contracts with health care providers.

5474 A. The Board, subject to the approval of the Governor, is authorized to prepare, amend from time to  
5475 time and submit to the Secretary of the United States Department of Health and Human Services a state  
5476 plan for medical assistance services pursuant to Title XIX of the United States Social Security Act and  
5477 any amendments thereto. The Board shall include in such plan:

5478 1. A provision for payment of medical assistance on behalf of individuals, up to the age of 21,  
5479 placed in foster homes or private institutions by private, nonprofit agencies licensed as child-placing  
5480 agencies by the Department of Social Services or placed through state and local subsidized adoptions to  
5481 the extent permitted under federal statute;

5482 2. A provision for determining eligibility for benefits for medically needy individuals which  
5483 disregards from countable resources an amount not in excess of \$3,500 for the individual and an amount  
5484 not in excess of \$3,500 for his spouse when such resources have been set aside to meet the burial  
5485 expenses of the individual or his spouse. The amount disregarded shall be reduced by (i) the face value  
5486 of life insurance on the life of an individual owned by the individual or his spouse if the cash surrender  
5487 value of such policies has been excluded from countable resources and (ii) the amount of any other  
5488 revocable or irrevocable trust, contract, or other arrangement specifically designated for the purpose of  
5489 meeting the individual's or his spouse's burial expenses;

5490 3. A requirement that, in determining eligibility, a home shall be disregarded. For those medically  
5491 needy persons whose eligibility for medical assistance is required by federal law to be dependent on the  
5492 budget methodology for Aid to Families with Dependent Children, a home means the house and lot used  
5493 as the principal residence and all contiguous property. For all other persons, a home shall mean the  
5494 house and lot used as the principal residence, as well as all contiguous property, as long as the value of  
5495 the land, exclusive of the lot occupied by the house, does not exceed \$5,000. In any case in which the  
5496 definition of home as provided here is more restrictive than that provided in the state plan for medical  
5497 assistance services in Virginia as it was in effect on January 1, 1972, then a home means the house and  
5498 lot used as the principal residence and all contiguous property essential to the operation of the home  
5499 regardless of value;

5500 4. A provision for payment of medical assistance on behalf of individuals up to the age of 21, who  
5501 are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per  
5502 admission;

5503 5. A provision for deducting from an institutionalized recipient's income an amount for the  
5504 maintenance of the individual's spouse at home;

5505 6. A provision for payment of medical assistance on behalf of pregnant women which provides for  
5506 payment for inpatient postpartum treatment in accordance with the medical criteria outlined in the most  
5507 current version of or an official update to the "Guidelines for Perinatal Care" prepared by the American  
5508 Academy of Pediatrics and the American College of Obstetricians and Gynecologists or the "Standards  
5509 for Obstetric-Gynecologic Services" prepared by the American College of Obstetricians and  
5510 Gynecologists. Payment shall be made for any postpartum home visit or visits for the mothers and the  
5511 children which are within the time periods recommended by the attending physicians in accordance with  
5512 and as indicated by such Guidelines or Standards. For the purposes of this subdivision, such Guidelines  
5513 or Standards shall include any changes thereto within six months of the publication of such Guidelines  
5514 or Standards or any official amendment thereto;

5515 7. A provision for the payment for family planning services on behalf of women who were  
5516 Medicaid-eligible for prenatal care and delivery as provided in this section at the time of delivery. Such  
5517 family planning services shall begin with delivery and continue for a period of 24 months, if the woman  
5518 continues to meet the financial eligibility requirements for a pregnant woman under Medicaid. For the  
5519 purposes of this section, family planning services shall not cover payment for abortion services and no  
5520 funds shall be used to perform, assist, encourage or make direct referrals for abortions;

5521 8. A provision for payment of medical assistance for high-dose chemotherapy and bone marrow  
5522 transplants on behalf of individuals over the age of 21 who have been diagnosed with lymphoma, breast  
5523 cancer, myeloma, or leukemia and have been determined by the treating health care provider to have a  
5524 performance status sufficient to proceed with such high-dose chemotherapy and bone marrow transplant.  
5525 Appeals of these cases shall be handled in accordance with the Department's expedited appeals process;

5526 9. A provision identifying entities approved by the Board to receive applications and to determine  
5527 eligibility for medical assistance;

5528 10. A provision for breast reconstructive surgery following the medically necessary removal of a  
5529 breast for any medical reason. Breast reductions shall be covered, if prior authorization has been

obtained, for all medically necessary indications. Such procedures shall be considered noncosmetic;

11. A provision for payment of medical assistance for annual pap smears;

12. A provision for payment of medical assistance services for prostheses following the medically necessary complete or partial removal of a breast for any medical reason;

13. A provision for payment of medical assistance which provides for payment for 48 hours of inpatient treatment for a patient following a radical or modified radical mastectomy and 24 hours of inpatient care following a total mastectomy or a partial mastectomy with lymph node dissection for treatment of disease or trauma of the breast. Nothing in this subdivision shall be construed as requiring the provision of inpatient coverage where the attending physician in consultation with the patient determines that a shorter period of hospital stay is appropriate;

14. A requirement that certificates of medical necessity for durable medical equipment and any supporting verifiable documentation shall be signed, dated, and returned by the physician, physician assistant, or nurse practitioner and in the durable medical equipment provider's possession within 60 days from the time the ordered durable medical equipment and supplies are first furnished by the durable medical equipment provider;

15. A provision for payment of medical assistance to (i) persons age 50 and over and (ii) persons age 40 and over who are at high risk for prostate cancer, according to the most recent published guidelines of the American Cancer Society, for one PSA test in a 12-month period and digital rectal examinations, all in accordance with American Cancer Society guidelines. For the purpose of this subdivision, "PSA testing" means the analysis of a blood sample to determine the level of prostate specific antigen;

16. A provision for payment of medical assistance for low-dose screening mammograms for determining the presence of occult breast cancer. Such coverage shall make available one screening mammogram to persons age 35 through 39, one such mammogram biennially to persons age 40 through 49, and one such mammogram annually to persons age 50 and over. The term "mammogram" means an X-ray examination of the breast using equipment dedicated specifically for mammography, including but not limited to the X-ray tube, filter, compression device, screens, film and cassettes, with an average radiation exposure of less than one rad mid-breast, two views of each breast;

17. A provision, when in compliance with federal law and regulation and approved by the Centers for Medicare & Medicaid Services (CMS), for payment of medical assistance services delivered to Medicaid-eligible students when such services qualify for reimbursement by the Virginia Medicaid program and may be provided by school divisions;

18. A provision for payment of medical assistance services for liver, heart and lung transplantation procedures for individuals over the age of 21 years when (i) there is no effective alternative medical or surgical therapy available with outcomes that are at least comparable; (ii) the transplant procedure and application of the procedure in treatment of the specific condition have been clearly demonstrated to be medically effective and not experimental or investigational; (iii) prior authorization by the Department of Medical Assistance Services has been obtained; (iv) the patient selection criteria of the specific transplant center where the surgery is proposed to be performed have been used by the transplant team or program to determine the appropriateness of the patient for the procedure; (v) current medical therapy has failed and the patient has failed to respond to appropriate therapeutic management; (vi) the patient is not in an irreversible terminal state; and (vii) the transplant is likely to prolong the patient's life and restore a range of physical and social functioning in the activities of daily living;

19. A provision for payment of medical assistance for colorectal cancer screening, specifically screening with an annual fecal occult blood test, flexible sigmoidoscopy or colonoscopy, or in appropriate circumstances radiologic imaging, in accordance with the most recently published recommendations established by the American College of Gastroenterology, in consultation with the American Cancer Society, for the ages, family histories, and frequencies referenced in such recommendations;

20. A provision for payment of medical assistance for custom ocular prostheses;

21. A provision for payment for medical assistance for infant hearing screenings and all necessary audiological examinations provided pursuant to § 32.1-64.1 using any technology approved by the United States Food and Drug Administration, and as recommended by the national Joint Committee on Infant Hearing in its most current position statement addressing early hearing detection and intervention programs. Such provision shall include payment for medical assistance for follow-up audiological examinations as recommended by a physician, physician assistant, nurse practitioner, or audiologist and performed by a licensed audiologist to confirm the existence or absence of hearing loss;

22. A provision for payment of medical assistance, pursuant to the Breast and Cervical Cancer Prevention and Treatment Act of 2000 (P.L. 106-354), for certain women with breast or cervical cancer when such women (i) have been screened for breast or cervical cancer under the Centers for Disease Control and Prevention (CDC) Breast and Cervical Cancer Early Detection Program established under

5591 Title XV of the Public Health Service Act; (ii) need treatment for breast or cervical cancer, including  
5592 treatment for a precancerous condition of the breast or cervix; (iii) are not otherwise covered under  
5593 creditable coverage, as defined in § 2701 (c) of the Public Health Service Act; (iv) are not otherwise  
5594 eligible for medical assistance services under any mandatory categorically needy eligibility group; and  
5595 (v) have not attained age 65. This provision shall include an expedited eligibility determination for such  
5596 women;

5597 23. A provision for the coordinated administration, including outreach, enrollment, re-enrollment and  
5598 services delivery, of medical assistance services provided to medically indigent children pursuant to this  
5599 chapter, which shall be called Family Access to Medical Insurance Security (FAMIS) Plus and the  
5600 FAMIS Plan program in § 32.1-351. A single application form shall be used to determine eligibility for  
5601 both programs; and

5602 24. A provision, when authorized by and in compliance with federal law, to establish a public-private  
5603 long-term care partnership program between the Commonwealth of Virginia and private insurance  
5604 companies that shall be established through the filing of an amendment to the state plan for medical  
5605 assistance services by the Department of Medical Assistance Services. The purpose of the program shall  
5606 be to reduce Medicaid costs for long-term care by delaying or eliminating dependence on Medicaid for  
5607 such services through encouraging the purchase of private long-term care insurance policies that have  
5608 been designated as qualified state long-term care insurance partnerships and may be used as the first  
5609 source of benefits for the participant's long-term care. Components of the program, including the  
5610 treatment of assets for Medicaid eligibility and estate recovery, shall be structured in accordance with  
5611 federal law and applicable federal guidelines.

5612 B. In preparing the plan, the Board shall:

5613 1. Work cooperatively with the State Board of Health to ensure that quality patient care is provided  
5614 and that the health, safety, security, rights and welfare of patients are ensured.

5615 2. Initiate such cost containment or other measures as are set forth in the appropriation act.

5616 3. Make, adopt, promulgate and enforce such regulations as may be necessary to carry out the  
5617 provisions of this chapter.

5618 4. Examine, before acting on a regulation to be published in the Virginia Register of Regulations  
5619 pursuant to § 2.2-4007.05, the potential fiscal impact of such regulation on local boards of social  
5620 services. For regulations with potential fiscal impact, the Board shall share copies of the fiscal impact  
5621 analysis with local boards of social services prior to submission to the Registrar. The fiscal impact  
5622 analysis shall include the projected costs/savings to the local boards of social services to implement or  
5623 comply with such regulation and, where applicable, sources of potential funds to implement or comply  
5624 with such regulation.

5625 5. Incorporate sanctions and remedies for certified nursing facilities established by state law, in  
5626 accordance with 42 C.F.R. § 488.400 et seq. "Enforcement of Compliance for Long-Term Care Facilities  
5627 With Deficiencies."

5628 6. On and after July 1, 2002, require that a prescription benefit card, health insurance benefit card, or  
5629 other technology that complies with the requirements set forth in § 38.2-3407.4:2 be issued to each  
5630 recipient of medical assistance services, and shall upon any changes in the required data elements set  
5631 forth in subsection A of § 38.2-3407.4:2, either reissue the card or provide recipients such corrective  
5632 information as may be required to electronically process a prescription claim.

5633 C. In order to enable the Commonwealth to continue to receive federal grants or reimbursement for  
5634 medical assistance or related services, the Board, subject to the approval of the Governor, may adopt,  
5635 regardless of any other provision of this chapter, such amendments to the state plan for medical  
5636 assistance services as may be necessary to conform such plan with amendments to the United States  
5637 Social Security Act or other relevant federal law and their implementing regulations or constructions of  
5638 these laws and regulations by courts of competent jurisdiction or the United States Secretary of Health  
5639 and Human Services.

5640 In the event conforming amendments to the state plan for medical assistance services are adopted, the  
5641 Board shall not be required to comply with the requirements of Article 2 (§ 2.2-4006 et seq.) of Chapter  
5642 40 of Title 2.2. However, the Board shall, pursuant to the requirements of § 2.2-4002, (i) notify the  
5643 Registrar of Regulations that such amendment is necessary to meet the requirements of federal law or  
5644 regulations or because of the order of any state or federal court, or (ii) certify to the Governor that the  
5645 regulations are necessitated by an emergency situation. Any such amendments that are in conflict with  
5646 the Code of Virginia shall only remain in effect until July 1 following adjournment of the next regular  
5647 session of the General Assembly unless enacted into law.

5648 D. The Director of Medical Assistance Services is authorized to:

5649 1. Administer such state plan and receive and expend federal funds therefor in accordance with  
5650 applicable federal and state laws and regulations; and enter into all contracts necessary or incidental to  
5651 the performance of the Department's duties and the execution of its powers as provided by law.

5652 2. Enter into agreements and contracts with medical care facilities, physicians, dentists and other

health care providers where necessary to carry out the provisions of such state plan. Any such agreement or contract shall terminate upon conviction of the provider of a felony. In the event such conviction is reversed upon appeal, the provider may apply to the Director of Medical Assistance Services for a new agreement or contract. Such provider may also apply to the Director for reconsideration of the agreement or contract termination if the conviction is not appealed, or if it is not reversed upon appeal.

3. Refuse to enter into or renew an agreement or contract with any provider who has been convicted of a felony.

4. Refuse to enter into or renew an agreement or contract with a provider who is or has been a principal in a professional or other corporation when such corporation has been convicted of a felony.

E. In any case in which a Medicaid agreement or contract is denied to a provider on the basis of his interest in a convicted professional or other corporation, the Director shall, upon request, conduct a hearing in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) regarding the provider's participation in the conduct resulting in the conviction.

The Director's decision upon reconsideration shall be consistent with federal and state laws. The Director may consider the nature and extent of any adverse impact the agreement or contract denial or termination may have on the medical care provided to Virginia Medicaid recipients.

F. When the services provided for by such plan are services which a marriage and family therapist, clinical psychologist, clinical social worker, professional counselor, or clinical nurse specialist is licensed to render in Virginia, the Director shall contract with any duly licensed marriage and family therapist, duly licensed clinical psychologist, licensed clinical social worker, licensed professional counselor or licensed clinical nurse specialist who makes application to be a provider of such services, and thereafter shall pay for covered services as provided in the state plan. The Board shall promulgate regulations which reimburse licensed marriage and family therapists, licensed clinical psychologists, licensed clinical social workers, licensed professional counselors and licensed clinical nurse specialists at rates based upon reasonable criteria, including the professional credentials required for licensure.

G. The Board shall prepare and submit to the Secretary of the United States Department of Health and Human Services such amendments to the state plan for medical assistance services as may be permitted by federal law to establish a program of family assistance whereby children over the age of 18 years shall make reasonable contributions, as determined by regulations of the Board, toward the cost of providing medical assistance under the plan to their parents.

H. The Department of Medical Assistance Services shall:

1. Include in its provider networks and all of its health maintenance organization contracts a provision for the payment of medical assistance on behalf of individuals up to the age of 21 who have special needs and who are Medicaid eligible, including individuals who have been victims of child abuse and neglect, for medically necessary assessment and treatment services, when such services are delivered by a provider which specializes solely in the diagnosis and treatment of child abuse and neglect, or a provider with comparable expertise, as determined by the Director.

2. Amend the Medallion II waiver and its implementing regulations to develop and implement an exception, with procedural requirements, to mandatory enrollment for certain children between birth and age three certified by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services as eligible for services pursuant to Part C of the Individuals with Disabilities Education Act (20 U.S.C. § 1471 et seq.).

3. Utilize, to the extent practicable, electronic funds transfer technology for reimbursement to contractors and enrolled providers for the provision of health care services under Medicaid and the Family Access to Medical Insurance Security Plan established under § 32.1-351.

I. The Director is authorized to negotiate and enter into agreements for services rendered to eligible recipients with special needs. The Board shall promulgate regulations regarding these special needs patients, to include persons with AIDS, ventilator-dependent patients, and other recipients with special needs as defined by the Board.

J. Except as provided in subdivision A 1 of § 2.2-4345, the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the activities of the Director authorized by subsection I of this section. Agreements made pursuant to this subsection shall comply with federal law and regulation.

§ 32.1-351.2. Children's Health Insurance Program Advisory Committee; purpose; membership; etc.

The Department of Medical Assistance Services shall maintain a Children's Health Insurance Program Advisory Committee to assess the policies, operations, and outreach efforts for Family Access to Medical Insurance Security (FAMIS) and FAMIS Plus and to evaluate enrollment, utilization of services, and the health outcomes of children eligible for such programs. The Committee shall consist of no more than 20 members and shall include membership from appropriate entities, as follows: one representative of the Joint Commission on Health Care, the Department of Social Services, the Department of Health, the Department of Education, the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability*

5714 and Substance Abuse Services, the Virginia Health Care Foundation, various provider associations and  
 5715 children's advocacy groups; and other individuals with significant knowledge and interest in children's  
 5716 health insurance. The Committee may report on the current status of FAMIS and FAMIS Plus and make  
 5717 recommendations as deemed necessary to the Director of the Department of Medical Assistance Services  
 5718 and the Secretary of Health and Human Resources.

5719 The Department of Medical Assistance Services shall enter into agreements with the Department of  
 5720 Education and the Department of Health to identify children who are eligible for free or reduced price  
 5721 school lunches or for services through the Women, Infants, and Children program (WIC) in order that  
 5722 the eligibility of such children for the Virginia Plan for Title XXI of the Social Security Act may be  
 5723 determined expeditiously.

5724 § 36-96.6. Certain restrictive covenants void; instruments containing such covenants.

5725 A. Any restrictive covenant and any related reversionary interest, purporting to restrict occupancy or  
 5726 ownership of property on the basis of race, color, religion, national origin, sex, elderliness, familial  
 5727 status, or handicap, whether heretofore or hereafter included in an instrument affecting the title to real or  
 5728 leasehold property, are declared to be void and contrary to the public policy of this Commonwealth.

5729 B. Any person who is asked to accept a document affecting title to real or leasehold property may  
 5730 decline to accept the same if it includes such a covenant or reversionary interest until the covenant or  
 5731 reversionary interest has been removed from the document. Refusal to accept delivery of an instrument  
 5732 for this reason shall not be deemed a breach of a contract to purchase, lease, mortgage, or otherwise  
 5733 deal with such property.

5734 C. No person shall solicit or accept compensation of any kind for the release or removal of any  
 5735 covenant or reversionary interest described in subsection A. Any person violating this subsection shall be  
 5736 liable to any person injured thereby in an amount equal to the greater of three times the compensation  
 5737 solicited or received, or \$500, plus reasonable attorneys' fees and costs incurred.

5738 D. A family care home, foster home, or group home in which physically handicapped, mentally ill,  
 5739 ~~mentally retarded~~ *intellectually disabled*, or developmentally disabled persons reside, with one or more  
 5740 resident counselors or other staff persons, shall be considered for all purposes residential occupancy by a  
 5741 single family when construing any restrictive covenant which purports to restrict occupancy or  
 5742 ownership of real or leasehold property to members of a single family or to residential use or structure.

5743 § 37.2-100. Definitions.

5744 As used in this title, unless the context requires a different meaning:

5745 "Abuse" means any act or failure to act by an employee or other person responsible for the care of  
 5746 an individual in a facility or program operated, licensed, or funded by the Department, excluding those  
 5747 operated by the Department of Corrections, that was performed or was failed to be performed  
 5748 knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological  
 5749 harm, injury, or death to a person receiving care or treatment for mental illness, ~~mental~~  
 5750 ~~retardation~~ *intellectual disabilities*, or substance abuse. Examples of abuse include acts such as:

- 5751 1. Rape, sexual assault, or other criminal sexual behavior;
- 5752 2. Assault or battery;
- 5753 3. Use of language that demeans, threatens, intimidates, or humiliates the person;
- 5754 4. Misuse or misappropriation of the person's assets, goods, or property;
- 5755 5. Use of excessive force when placing a person in physical or mechanical restraint;
- 5756 6. Use of physical or mechanical restraints on a person that is not in compliance with federal and  
 5757 state laws, regulations, and policies, professionally accepted standards of practice, or the person's  
 5758 individualized services plan; and
- 5759 7. Use of more restrictive or intensive services or denial of services to punish the person or that is  
 5760 not consistent with his individualized services plan.

5761 "Administrative policy community services board" or "administrative policy board" means the public  
 5762 body organized in accordance with the provisions of Chapter 5 that is appointed by and accountable to  
 5763 the governing body of each city and county that established it to set policy for and administer the  
 5764 provision of mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse services. The  
 5765 "administrative policy community services board" or "administrative policy board" denotes the board, the  
 5766 members of which are appointed pursuant to § 37.2-501 with the powers and duties enumerated in  
 5767 subsection A of § 37.2-504 and § 37.2-505. Mental health, ~~mental retardation~~ *intellectual disability*, and  
 5768 substance abuse services are provided through local government staff or through contracts with other  
 5769 organizations and providers.

5770 "Behavioral health authority" or "authority" means a public body and a body corporate and politic  
 5771 organized in accordance with the provisions of Chapter 6 that is appointed by and accountable to the  
 5772 governing body of the city or county that established it for the provision of mental health, ~~mental~~  
 5773 ~~retardation~~ *intellectual disability*, and substance abuse services. "Behavioral health authority" or  
 5774 "authority" also includes the organization that provides such services through its own staff or through  
 5775 contracts with other organizations and providers.

"Board" means the State Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services Board.

"Commissioner" means the Commissioner of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services.

"Community services board" means the public body established pursuant to § 37.2-501 that provides mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse services within each city and county that established it; the term "community services board" shall include administrative policy community services boards, operating community services boards, and local government departments with policy-advisory community services boards.

"Consumer" means a current direct recipient of public or private mental health, ~~mental retardation~~ *intellectual disability*, or substance abuse treatment or habilitation services.

"Department" means the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services.

"Facility" means a state or licensed hospital, training center, psychiatric hospital, or other type of residential or outpatient mental health or ~~mental retardation~~ *facility or a facility for persons with intellectual disabilities*. When modified by the word "state," "facility" means a state hospital or training center operated by the Department, including the buildings and land associated with it.

"Family member" means an immediate family member of a consumer or the principal caregiver of a consumer. A principal caregiver is a person who acts in the place of an immediate family member, including other relatives and foster care providers, but does not have a proprietary interest in the care of the consumer.

"Hospital", when not modified by the words "state" or "licensed," means a state hospital or licensed hospital that provides care and treatment for persons with mental illness.

"Licensed hospital" means a hospital or institution, including a psychiatric unit of a general hospital, that is licensed pursuant to the provisions of this title.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

~~"Mental retardation"~~ *"Intellectual Disability"* means a disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Neglect" means failure by an individual or a program or facility operated, licensed, or funded by the Department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of a person receiving care or treatment for mental illness, ~~mental retardation~~ *intellectual disability*, or substance abuse.

"Operating community services board" or "operating board" means the public body organized in accordance with the provisions of Chapter 5 that is appointed by and accountable to the governing body of each city and county that established it for the direct provision of mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse services. The "operating community services board" or "operating board" denotes the board, the members of which are appointed pursuant to § 37.2-501 with the powers and duties enumerated in subsection A of § 37.2-504 and § 37.2-505. "Operating community services board" or "operating board" also includes the organization that provides such services, through its own staff or through contracts with other organizations and providers.

"Performance contract" means the annual agreement negotiated and entered into by a community services board or behavioral health authority with the Department through which it provides state and federal funds appropriated for mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse services to that community services board or behavioral health authority.

"Policy-advisory community services board" or "policy-advisory board" means the public body organized in accordance with the provisions of Chapter 5 that is appointed by and accountable to the governing body of each city or county that established it to provide advice on policy matters to the local government department that provides mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse services pursuant to subsection A of § 37.2-504 and § 37.2-505. The "policy-advisory community services board" or "policy-advisory board" denotes the board, the members of which are appointed pursuant to § 37.2-501 with the powers and duties enumerated in subsection B of § 37.2-504.

"Service area" means the city or county or combination of cities and counties or counties or cities that is served by a community services board or behavioral health authority or the cities and counties that are served by a state facility.

5837 "Special justice" means a person appointed by a chief judge of a judicial circuit for the purpose of  
5838 performing the duties of a judge pursuant to § 37.2-803.

5839 "State hospital" means a hospital, psychiatric institute, or other institution operated by the Department  
5840 that provides care and treatment for persons with mental illness.

5841 "Substance abuse" means the use of drugs, enumerated in the Virginia Drug Control Act  
5842 (§ 54.1-3400 et seq.), without a compelling medical reason or alcohol that (i) results in psychological or  
5843 physiological dependence or danger to self or others as a function of continued and compulsive use or  
5844 (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially  
5845 disordering behavior and (iii), because of such substance abuse, requires care and treatment for the  
5846 health of the individual. This care and treatment may include counseling, rehabilitation, or medical or  
5847 psychiatric care.

5848 "Training center" means a facility operated by the Department for the treatment, training, or  
5849 habilitation of persons with ~~mental retardation~~ *intellectual disabilities*.

5850 § 37.2-200. State Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse  
5851 Services Board.

5852 A. The State Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services  
5853 Board is established as a policy board, within the meaning of § 2.2-2100, in the executive branch of  
5854 government. The Board shall consist of nine nonlegislative citizen members to be appointed by the  
5855 Governor, subject to confirmation by the General Assembly. The nine members shall consist of one  
5856 consumer or former consumer, one family member of a consumer or former consumer, one consumer or  
5857 former consumer or family member of a consumer or former consumer, one elected local government  
5858 official, one psychiatrist licensed to practice in Virginia, and four citizens of the Commonwealth at  
5859 large. The Governor, in appointing the psychiatrist member, may make his selection from nominations  
5860 submitted by the Medical Society of Virginia in collaboration with the Psychiatric Society of Virginia  
5861 and the Northern Virginia Chapter of the Washington Psychiatric Society.

5862 B. Appointments shall be made for terms of four years each, except appointments to fill vacancies  
5863 that shall be for the unexpired terms of vacated appointments. Vacancies shall be filled in the same  
5864 manner as the original appointments. All members may be reappointed. However, no member shall be  
5865 eligible to serve more than two four-year terms. The remainder of any term to which a member is  
5866 appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for  
5867 reappointment. No person shall serve more than a total of 12 years. Members of the Board may be  
5868 suspended or removed by the Governor at his pleasure.

5869 C. Members of the Board shall receive compensation for their services and shall be reimbursed for  
5870 all reasonable and necessary expenses incurred in the performance of their duties as provided in  
5871 §§ 2.2-2813 and 2.2-2825. The Board is authorized to employ a secretary to assist in the Board's  
5872 administrative duties. The compensation of the secretary shall be fixed by the Board within the specific  
5873 limits of the appropriation made therefor by the General Assembly, and the compensation shall be  
5874 subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2. The secretary shall perform the  
5875 duties required of him by the Board. The Department and all other agencies of the Commonwealth shall  
5876 provide assistance to the Board upon request.

5877 D. The main office of the Board shall be in the City of Richmond. The Board shall meet quarterly  
5878 and at such other times as it deems proper. The Board shall elect a chairman and vice-chairman from  
5879 among its membership. The meetings of the Board shall be held at the call of the chairman or whenever  
5880 the majority of the members so request. Five members shall constitute a quorum.

5881 E. The chairman of the Board shall submit to the Governor and the General Assembly an annual  
5882 executive summary of the activity and work of the Board no later than the first day of each regular  
5883 session of the General Assembly. The executive summary shall be submitted as provided in the  
5884 procedures of the Division of Legislative Automated Systems for the processing of legislative documents  
5885 and reports and shall be posted on the General Assembly's website.

5886 § 37.2-203. Powers and duties of Board.

5887 The Board shall have the following powers and duties:

5888 1. To develop and establish programmatic and fiscal policies governing the operation of state  
5889 hospitals, training centers, community services boards, and behavioral health authorities;

5890 2. To ensure the development of long-range programs and plans for mental health, ~~mental~~  
5891 ~~retardation~~ *intellectual disability*, and substance abuse services provided by the Department, community  
5892 services boards, and behavioral health authorities;

5893 3. To review and comment on all budgets and requests for appropriations for the Department prior to  
5894 their submission to the Governor and on all applications for federal funds;

5895 4. To monitor the activities of the Department and its effectiveness in implementing the policies of  
5896 the Board;

5897 5. To advise the Governor, Commissioner, and General Assembly on matters relating to mental  
5898 health, ~~mental retardation~~ *intellectual disabilities*, and substance abuse;



6. To adopt regulations that may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Commissioner or the Department;

7. To ensure the development of programs to educate citizens about and elicit public support for the activities of the Department, community services boards, and behavioral health authorities;

8. To ensure that the Department assumes the responsibility for providing for education and training of school-age consumers in state facilities, pursuant to § 37.2-312; and

9. To change the names of state facilities.

Prior to the adoption, amendment, or repeal of any regulation regarding substance abuse services, the Board shall, in addition to the procedures set forth in the Administrative Process Act (§ 2.2-4000 et seq.), present the proposed regulation to the Substance Abuse Services Council, established pursuant to § 2.2-2696, at least 30 days prior to the Board's action for the Council's review and comment.

§ 37.2-204. Appointments to state and local human rights committees.

The Board shall appoint a state human rights committee that shall appoint local human rights committees to address alleged violations of consumers' human rights. One-third of the appointments made to the state or local human rights committees shall be current or former consumers or family members of current or former consumers, with at least two consumers who are receiving or who have received within five years of their initial appointment public or private mental health, ~~mental retardation~~ *intellectual disability*, or substance abuse treatment or habilitation services on each committee. In addition, at least one appointment to the state and each local human rights committee shall be a health care provider. Remaining appointments shall include lawyers and persons with interest, knowledge, or training in the mental health, ~~mental retardation~~ *intellectual disability*, or substance abuse field. No current employee of the Department, a community services board, or a behavioral health authority shall serve as a member of the state human rights committee. No current employee of the Department, a community services board, a behavioral health authority, or any facility, program, or organization licensed or funded by the Department or funded by a community services board or behavioral health authority shall serve as a member of any local human rights committee that serves an oversight function for the employing facility, program, or organization.

§ 37.2-300. Creation and supervision of Department.

The Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services is hereby established in the executive branch of government responsible to the Governor. The Department shall be under the supervision and management of the Commissioner. The Commissioner shall carry out his management and supervisory responsibilities in accordance with the policies and regulations of the Board and applicable federal and state statutes and regulations.

§ 37.2-303. Qualifications of Commissioner.

The Commissioner shall be a person of proven executive and administrative ability and shall have had appropriate education and substantial experience in the fields of mental health, ~~mental retardation~~ *intellectual disabilities*, or substance abuse.

§ 37.2-306. Research into causes of mental illness, ~~mental retardation~~ *intellectual disabilities*, substance abuse, and related subjects.

The Commissioner is hereby directed to promote research into the causes of mental illness, ~~mental retardation~~ *intellectual disabilities*, and substance abuse throughout the Commonwealth. The Commissioner shall encourage the directors of the state facilities and their staffs in the investigation of all subjects relating to mental illness, ~~mental retardation~~ *intellectual disability*, and substance abuse. In these research programs, the Commissioner shall make use, insofar as practicable, of the services and facilities of medical schools and the hospitals allied with them.

§ 37.2-315. Comprehensive State Plan for mental health, intellectual disabilities, and substance abuse services.

The Department, in consultation with community services boards, behavioral health authorities, state hospitals and training centers, consumers, consumers' families, advocacy organizations, and other interested parties, shall develop and update biennially a six-year Comprehensive State Plan for mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse services. The Comprehensive State Plan shall identify the needs of and the resource requirements for providing services and supports to persons with mental illness, ~~mental retardation~~ *intellectual disabilities*, or substance abuse across the Commonwealth and shall propose strategies to address these needs. The Comprehensive State Plan shall be used in the development of the Department's biennial budget submission to the Governor.

§ 37.2-316. System restructuring; state and community consensus and planning team required.

A. For the purpose of considering any restructuring of the system of mental health services involving an existing state hospital, the Commissioner shall establish a state and community consensus and planning team consisting of Department staff and representatives of the localities served by the state hospital, including local government officials, consumers, family members of consumers, advocates, state hospital employees, community services boards, behavioral health authorities, public and private service

providers, licensed hospitals, local health department staff, local social services department staff, sheriffs' office staff, area agencies on aging, and other interested persons. In addition, the members of the House of Delegates and the Senate representing the localities served by the affected state hospital may serve on the state and community consensus and planning team for that state hospital. Each state and community consensus and planning team, in collaboration with the Commissioner, shall develop a plan that addresses (i) the types, amounts, and locations of new and expanded community services that would be needed to successfully implement the closure or conversion of the state hospital to any use other than the provision of mental health services, including a six-year projection of the need for inpatient psychiatric beds and related community mental health services; (ii) the development of a detailed implementation plan designed to build community mental health infrastructure for current and future capacity needs; (iii) the creation of new and enhanced community services prior to the closure of the state hospital or its conversion to any use other than the provision of mental health services; (iv) the transition of state hospital consumers to community services in the locality of their residence prior to admission or the locality of their choice after discharge; (v) the resolution of issues relating to the restructuring implementation process, including employment issues involving state hospital employee transition planning and appropriate transitional benefits; and (vi) a six-year projection comparing the cost of the current structure and the proposed structure.

B. The Commissioner shall ensure that each plan includes the following components:

1. A plan for community education;
2. A plan for the implementation of required community services, including state-of-the-art practice models and any models required to meet the unique characteristics of the area to be served, which may include models for rural areas;
3. A plan for assuring the availability of adequate staff in the affected communities, including specific strategies for transferring qualified state hospital employees to community services;
4. A plan for assuring the development, funding, and implementation of individualized discharge plans pursuant to § 37.2-505 for individuals discharged as a result of the closure or conversion of the state hospital to any use other than the provision of mental health services; and
5. A provision for suspending implementation of the plan if the total general funds appropriated to the Department for state hospital and community services decrease in any year of plan implementation by more than 10 percent from the year in which the plan was approved by the General Assembly.

C. At least nine months prior to any proposed state hospital closure or conversion of the state hospital to any use other than the provision of mental health services, the state and community consensus and planning team shall submit a plan to the Joint Commission on Health Care and the Governor for review and recommendation.

D. The Joint Commission on Health Care shall make a recommendation to the General Assembly on the plan no later than six months prior to the date of the proposed closure or conversion of the state hospital to any use other than the provision of mental health services.

E. Upon approval of the plan by the General Assembly and the Governor, the Commissioner shall ensure that the plan components required by subsection B are in place and may thereafter perform all tasks necessary to implement the closure or conversion of the state hospital to any use other than the provision of mental health services.

F. Any funds saved by the closure or conversion of the state hospital to any use other than the provision of mental health services and not allocated to individualized services plans for consumers being transferred or discharged as a result of the closure or conversion of the state hospital to any use other than the provision of mental health services shall be invested in the Mental Health, ~~Mental Retardation~~ *Intellectual Disability*, and Substance Abuse Services Trust Fund established in Article 4 (§ 37.2-317 et seq.) of this chapter.

G. Nothing in this section shall prevent the Commissioner from leasing unused, vacant space to any public or private organization.

§ 37.2-317. Definitions.

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

"Assets" means the buildings and land of state facilities operated by the Department.

"Fund" means the Mental Health, ~~Mental Retardation~~ *Intellectual Disability*, and Substance Abuse Services Trust Fund.

"Net proceeds" means the gross amount received by the seller on account of the sale of any assets (i) less costs incurred on behalf of the seller in connection with such sale and (ii), if after the sale the sold assets will be used by an entity other than a state agency or instrumentality or a local governmental entity in a governmental activity and debt obligations financed any portion of the sold assets and any amount of such obligations is outstanding at the time of the sale, less the amount necessary to provide for the payment or redemption of the portion of such outstanding obligations that financed the sold assets, which amount shall be used to pay or redeem such obligations or shall be transferred to the third party issuer of the obligations for a use permitted in accordance with such obligations.

§ 37.2-318. Mental Health, Intellectual Disability, and Substance Abuse Services Trust Fund established; purpose.

There is hereby created in the state treasury a special nonreverting fund to be known as the Mental Health, ~~Mental Retardation~~ *Intellectual Disability*, and Substance Abuse Services Trust Fund to enhance and ensure for the coming years the quality of care and treatment provided to consumers of public mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse services. The Fund shall be established on the books of the Comptroller. Notwithstanding the provisions of § 2.2-1156, the Fund shall consist of the net proceeds of the sale of vacant buildings and land held by the Department. The Fund shall also consist of such moneys as shall be appropriated by the General Assembly and any private donations. Interest earned on moneys 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 article. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner.

§ 37.2-319. Administration of Mental Health, Intellectual Disability, and Substance Abuse Services Trust Fund.

The Fund shall be administered by the Commissioner. Moneys in the Fund shall be used solely to provide mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse services to enhance and ensure the quality of care and treatment provided by the Commonwealth to persons with mental illness, ~~mental retardation~~ *intellectual disabilities*, or substance abuse. Notwithstanding any other provision of law, the net proceeds from the sale of any vacant buildings and land shall first be used to (i) deliver mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse services within the same service area where the sold buildings and land were located to ensure the same level of mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse services as before the sale and (ii) provide benefits to those persons who were employees of the Commonwealth and, as a result of the sale, are no longer employed by the Commonwealth or are otherwise negatively affected by the sale. Benefits shall include appropriate transitional benefits.

§ 37.2-403. Definitions.

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

"Brain injury" is any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or non-traumatic insults. Non-traumatic insults may include, but are not limited to anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor and stroke. Brain injury does not include hereditary, congenital or degenerative brain disorders, or injuries induced by birth trauma.

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to persons with mental illness, ~~mental retardation~~ *intellectual disabilities*, or substance abuse, (ii) services to persons who receive day support, in-home support, or crisis stabilization services funded through the Individual and Families Developmental Disabilities Support Waiver, (iii) services to persons under the Brain Injury Waiver, or (iv) residential services for persons with brain injury. The person, entity, or organization shall include a hospital as defined in § 32.1-123, community services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to § 54.1-3501, 54.1-3601, or 54.1-3701.

"Service or services" means:

1. Planned individualized interventions intended to reduce or ameliorate mental illness, ~~mental retardation~~ *intellectual disability*, or substance abuse through care, treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, ~~mental retardation~~ *intellectual disabilities*, or substance abuse. Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment, and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, and other residential services;

2. Day support, in-home support, and crisis stabilization services provided to individuals under the Individual and Families Developmental Disabilities Support Waiver; and

3. Planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided under the Brain Injury Waiver or in residential services for persons with brain injury.

§ 37.2-409. Intermediate care facilities for the intellectually disabled.

The Board may adopt regulations specifying the maximum number of consumers to be served by any

6083 intermediate care facility for the ~~mentally retarded~~ *intellectually disabled*.

6084 § 37.2-416. Background checks required.

6085 A. As used in this section, the term "direct consumer care position" means any position that includes  
6086 responsibility for (i) treatment, case management, health, safety, development, or well-being of a  
6087 consumer or (ii) immediately supervising a person in a position with this responsibility.

6088 As used in this section, "hire for compensated employment" does not include (i) a promotion from  
6089 one adult substance abuse treatment position to another such position within the same licensee licensed  
6090 pursuant to this article or (ii) new employment in an adult substance abuse treatment position in another  
6091 office or program licensed pursuant to this article if the person employed prior to July 1, 1999, in a  
6092 licensed program had no convictions in the five years prior to the application date for employment. As  
6093 used in this section, "hire for compensated employment" includes (a) a promotion or transfer from an  
6094 adult substance abuse treatment position to any mental health or ~~mental retardation~~ *intellectual disability*  
6095 *services* direct consumer care position within the same licensee licensed pursuant to this article or (b)  
6096 new employment in any mental health or ~~mental retardation~~ *intellectual disability services* direct  
6097 consumer care position in another office or program of the same licensee licensed pursuant to this article  
6098 for which the person has previously worked in an adult substance abuse treatment position.

6099 B. Every provider licensed pursuant to this article shall require any applicant who accepts  
6100 employment in any direct consumer care position to submit to fingerprinting and provide personal  
6101 descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal  
6102 Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information  
6103 regarding the applicant. Except as otherwise provided in subsections C or E, no provider licensed  
6104 pursuant to this article shall hire for compensated employment persons who have been convicted of any  
6105 offense listed in subsection B of § 37.2-314.

6106 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no  
6107 record exists, shall submit a report to the requesting authorized officer or director of a provider licensed  
6108 pursuant to this article. If any applicant is denied employment because of information appearing on the  
6109 criminal history record and the applicant disputes the information upon which the denial was based, the  
6110 Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures  
6111 for obtaining a copy of the criminal history record from the FBI. The information provided to the  
6112 authorized officer or director of a provider licensed pursuant to this article shall not be disseminated  
6113 except as provided in this section.

6114 C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment  
6115 at adult substance abuse treatment facilities a person who was convicted of a misdemeanor violation  
6116 relating to (i) unlawful hazing, as set out in § 18.2-56; or (ii) reckless handling of a firearm, as set out  
6117 in § 18.2-56.1; or any misdemeanor or felony violation related to (a) reckless endangerment of others by  
6118 throwing objects, as set out in § 18.2-51.3; (b) threat, as set out in § 18.2-60; (c) breaking and entering a  
6119 dwelling house with intent to commit other misdemeanor, as set out in § 18.2-92; or (d) possession of  
6120 burglarious tools, as set out in § 18.2-94; or any felony violation relating to the distribution of drugs, as  
6121 set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to  
6122 subsections H 1 and H 2 of § 18.2-248; or an equivalent offense in another state, if the hiring provider  
6123 determines, based upon a screening assessment, that the criminal behavior was substantially related to  
6124 the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk  
6125 to consumers based on his criminal history background and his substance abuse history.

6126 D. The hiring provider and a screening contractor designated by the Department shall screen  
6127 applicants who meet the criteria set forth in subsection C to assess whether the applicants have been  
6128 rehabilitated successfully and are not a risk to consumers based on their criminal history backgrounds  
6129 and substance abuse histories. To be eligible for such screening, the applicant shall have completed all  
6130 prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in  
6131 any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall  
6132 have been free of parole or probation for at least five years for all convictions. In addition to any  
6133 supplementary information the provider or screening contractor may require or the applicant may wish to  
6134 present, the applicant shall provide to the screening contractor a statement from his most recent  
6135 probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing  
6136 or post-sentencing report in connection with the felony conviction. The cost of this screening shall be  
6137 paid by the applicant, unless the licensed provider decides to pay the cost.

6138 E. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment  
6139 persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or  
6140 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed the offense  
6141 while employed in a direct consumer care position.

6142 F. Providers licensed pursuant to this article also shall require, as a condition of employment for all  
6143 applicants, written consent and personal information necessary to obtain a search of the registry of  
6144 founded complaints of child abuse and neglect that is maintained by the Department of Social Services

pursuant to § 63.2-1515.

G. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the provider licensed pursuant to this article decides to pay the cost.

H. 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.

§ 37.2-423. Office created; appointment of Inspector General for Mental Health, Intellectual Disability and Substance Abuse Services.

There is hereby created the Office of Inspector General for Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services to inspect, monitor, and review the quality of services provided in state facilities and by providers as defined in § 37.2-403, including licensed mental health treatment units in state correctional facilities. The Inspector General shall be appointed by the Governor, subject to confirmation by the General Assembly, and shall report to the Governor. The Inspector General shall be appointed initially for a term that expires one full year following the end of the Governor's term of office, and, thereafter, the term shall be for four years. Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until 30 days after the next meeting of the ensuing General Assembly and, if confirmed, thereafter for the remainder of the term.

§ 37.2-500. Purpose; community services board; services to be provided.

The Department, for the purposes of establishing, maintaining, and promoting the development of mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse services in the Commonwealth, may provide funds to assist any city or county or any combinations of cities or counties or cities and counties in the provision of these services. Every county or city shall establish a community services board by itself or in any combination with other cities and counties, unless it establishes a behavioral health authority pursuant to Chapter 6 (§ 37.2-600 et seq.) of this title. Every county or city or any combination of cities and counties that has established a community services board, in consultation with that board, shall designate it as an operating community services board, an administrative policy community services board or a local government department with a policy-advisory community services board. The governing body of each city or county that established the community services board may change this designation at any time by ordinance. In the case of a community services board established by more than one city or county, the decision to change this designation shall be the unanimous decision of all governing bodies.

The core of services provided by community services boards within the cities and counties that they serve shall include emergency services and, subject to the availability of funds appropriated for them, case management services. The core of services may include a comprehensive system of inpatient, outpatient, day support, residential, prevention, early intervention, and other appropriate mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse services necessary to provide individualized services and supports to persons with mental illnesses, ~~mental retardation~~ *intellectual disabilities*, or substance abuse.

In order to provide comprehensive mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse services within a continuum of care, the community services board shall function as the single point of entry into publicly funded mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse services.

§ 37.2-504. Community services boards; local government departments; powers and duties.

A. Every operating and administrative policy community services board and local government department with a policy-advisory board shall have the following powers and duties:

1. Review and evaluate public and private community mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse services and facilities that receive funds from it and advise the governing body of each city or county that established it as to its findings.

2. Pursuant to § 37.2-508, submit to the governing body of each city or county that established it an annual performance contract for community mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse services for its approval prior to submission of the contract to the Department.

3. Within amounts appropriated for this purpose, provide services authorized under the performance contract.

4. In accordance with its approved performance contract, enter into contracts with other providers for the delivery of services or operation of facilities.

5. In the case of operating and administrative policy boards, make policies or regulations concerning the delivery of services and operation of facilities under its direction or supervision, subject to applicable policies and regulations adopted by the Board.

6. In the case of an operating board, appoint an executive director of community mental health,

6206 ~~mental retardation~~intellectual disability, and substance abuse services, who meets the minimum  
6207 qualifications established by the Department, and prescribe his duties. The compensation of the executive  
6208 director shall be fixed by the operating board within the amounts made available by appropriation for  
6209 this purpose. The executive director shall serve at the pleasure of the operating board and be employed  
6210 under an annually renewable contract that contains performance objectives and evaluation criteria. For an  
6211 operating board, the Department shall approve the selection of the executive director for adherence to  
6212 minimum qualifications established by the Department and the salary range of the executive director. In  
6213 the case of an administrative policy board, the board shall participate with local government in the  
6214 appointment and annual performance evaluation of an executive director of community mental health,  
6215 ~~mental retardation~~intellectual disability, and substance abuse services, who meets the minimum  
6216 qualifications established by the Department, and prescribe his duties. The compensation of the executive  
6217 director shall be fixed by local government in consultation with the administrative policy board within  
6218 the amounts made available by appropriation for this purpose. In the case of a local government  
6219 department with a policy-advisory board, the director of the local government department shall serve as  
6220 the executive director. The policy-advisory board shall participate in the selection and the annual  
6221 performance evaluation of the executive director, who meets the minimum qualifications established by  
6222 the Department. The compensation of the executive director shall be fixed by local government in  
6223 consultation with the policy-advisory board within the amounts made available by appropriation for this  
6224 purpose.

6225 7. Prescribe a reasonable schedule of fees for services provided by personnel or facilities under the  
6226 jurisdiction or supervision of the board and establish procedures for the collection of those fees. All fees  
6227 collected shall be included in the performance contract submitted to the local governing body or bodies  
6228 pursuant to subdivision 2 of this section and § 37.2-508 and shall be used only for community mental  
6229 health, ~~mental retardation~~intellectual disability, and substance abuse purposes. Every board shall institute  
6230 a reimbursement system to maximize the collection of fees from persons receiving services under its  
6231 jurisdiction or supervision, consistent with the provisions of § 37.2-511, and from responsible third party  
6232 payors. Boards shall not attempt to bill or collect fees for time spent participating in commitment  
6233 hearings for involuntary admissions pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8.

6234 8. Accept or refuse gifts, donations, bequests, or grants of money or property from any source and  
6235 utilize them as authorized by the governing body of each city or county that established it.

6236 9. Seek and accept funds through federal grants. In accepting federal grants, the board shall not bind  
6237 the governing body of any city or county that established it to any expenditures or conditions of  
6238 acceptance without the prior approval of the governing body.

6239 10. Notwithstanding any provision of law to the contrary, disburse funds appropriated to it in  
6240 accordance with such regulations as may be established by the governing body of each city or county  
6241 that established it.

6242 11. Apply for and accept loans as authorized by the governing body of each city or county that  
6243 established it.

6244 12. Develop joint written agreements, consistent with policies adopted by the Board, with local  
6245 school divisions; health departments; boards of social services; housing agencies, where they exist;  
6246 courts; sheriffs; area agencies on aging; and regional Department of Rehabilitative Services offices. The  
6247 agreements shall specify the services to be provided to consumers. All participating agencies shall  
6248 develop and implement the agreements and shall review the agreements annually.

6249 13. Develop and submit to the Department the necessary information for the preparation of the  
6250 Comprehensive State Plan for mental health, ~~mental retardation~~intellectual disability, and substance  
6251 abuse services pursuant to § 37.2-315.

6252 14. Take all necessary and appropriate actions to maximize the involvement and participation of  
6253 consumers and family members of consumers in policy formulation and services planning, delivery, and  
6254 evaluation.

6255 15. Institute, singly or in combination with other community services boards or behavioral health  
6256 authorities, a dispute resolution mechanism that is approved by the Department and enables consumers  
6257 and family members of consumers to resolve concerns, issues, or disagreements about services without  
6258 adversely affecting their access to or receipt of appropriate types and amounts of current or future  
6259 services from the community services board.

6260 16. Notwithstanding the provisions of § 37.2-400 or any regulations adopted thereunder, release data  
6261 and information about individual consumers to the Department so long as the Department implements  
6262 procedures to protect the confidentiality of that data and information.

6263 17. In the case of administrative policy boards and local government departments with  
6264 policy-advisory boards, carry out other duties and responsibilities as assigned by the governing body of  
6265 each city or county that established it.

6266 18. In the case of operating boards, have authority, notwithstanding any provision of law to the  
6267 contrary, to receive state and federal funds directly from the Department and act as its own fiscal agent,

when authorized to do so by the governing body of each city or county that established it.

By local agreement between the administrative policy board and the governing body of the city or county that established it, additional responsibilities may be carried out by the local government, including personnel or financial management. In the case of an administrative policy board established by more than one city or county, the cities and counties shall designate which local government shall assume these responsibilities.

B. Every policy-advisory community services board, with staff support provided by the director of the local government department, shall have the following powers and duties:

1. Advise the local government regarding policies or regulations for the delivery of services and operation of facilities by the local government department, subject to applicable policies and regulations adopted by the Board.

2. Review and evaluate the operations of the local government department and advise the local governing body of each city or county that established it as to its findings.

3. Review the community mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse services provided by the local government department and advise the local governing body of each city or county that established it as to its findings.

4. Review and comment on the annual performance contract, performance reports, and Comprehensive State Plan information developed by the local government department. The board's comments shall be attached to the performance contract, performance reports, and Comprehensive State Plan information prior to their submission to the local governing body of each city or county that established it and to the Department.

5. Advise the local government as to the necessary and appropriate actions to maximize the involvement and participation of consumers and family members of consumers in policy formulation and services planning, delivery, and evaluation.

6. Participate in the selection and the annual performance evaluation of the local government department director employed by the city or county.

7. Carry out other duties and responsibilities as assigned by the governing body of each city or county that established it.

§ 37.2-505. Coordination of services for preadmission screening and discharge planning.

A. The community services board shall fulfill the following responsibilities:

1. Be responsible for coordinating the community services necessary to accomplish effective preadmission screening and discharge planning for persons referred to the community services board. When preadmission screening reports are required by the court on an emergency basis pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8, the community services board shall ensure the development of the report for the court. To accomplish this coordination, the community services board shall establish a structure and procedures involving staff from the community services board and, as appropriate, representatives from (i) the state hospital or training center serving the board's service area, (ii) the local department of social services, (iii) the health department, (iv) the Department of Rehabilitative Services office in the board's service area, (v) the local school division, and (vi) other public and private human services agencies, including licensed hospitals.

2. Provide preadmission screening services prior to the admission for treatment pursuant to § 37.2-805 or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of any person who requires emergency mental health services while in a city or county served by the community services board.

3. Provide, in consultation with the appropriate state hospital or training center, discharge planning for any person who, prior to admission, resided in a city or county served by the community services board or who chooses to reside after discharge in a city or county served by the board and who is to be released from a state hospital or training center pursuant to § 37.2-837. The discharge 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~~ *intellectual disability*, 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 these services.

No person shall be discharged from a state hospital or training center without completion by the community services board of the discharge plan described in this subdivision. If state hospital or training center staff identify a consumer as ready for discharge and the community services board that is responsible for the person's care disagrees, the community services board shall document in the treatment plan within 30 days of the person's identification any reasons for not accepting the person for discharge. If the state hospital or training center disagrees with the community services board and the board refuses to develop a discharge plan to accept the person back into the community, the state hospital or training center or the community services board shall ask the Commissioner to review the

6329 state hospital's or training center's determination that the person is ready for discharge in accordance  
6330 with procedures established by the Department in collaboration with state hospitals, training centers, and  
6331 community services boards. If the Commissioner determines that the person is ready for discharge, a  
6332 discharge plan shall be developed by the Department to ensure the availability of adequate services for  
6333 the consumer and the protection of the community. The Commissioner also shall verify that sufficient  
6334 state-controlled funds have been allocated to the community services board through the performance  
6335 contract. If sufficient state-controlled funds have been allocated, the Commissioner may contract with a  
6336 private provider, another community services board, or a behavioral health authority to deliver the  
6337 services specified in the discharge plan and withhold allocated funds applicable to that consumer's  
6338 discharge plan from the community services board in accordance with subsections C and E of  
6339 § 37.2-508.

6340 B. The community services board may perform the functions set out in subdivision A 1 in the case  
6341 of children by referring them to the locality's family assessment and planning team and by cooperating  
6342 with the community policy and management team in the coordination of services for troubled youths  
6343 and their families. The community services board may involve the family assessment and planning team  
6344 and the community policy and management team, but it remains responsible for performing the  
6345 functions set out in subdivisions A 2 and A 3 in the case of children.

6346 § 37.2-506. Background checks required.

6347 A. As used in this section, the term "direct consumer care position" means any position that includes  
6348 responsibility for (i) treatment, case management, health, safety, development, or well-being of a  
6349 consumer or (ii) immediately supervising a person in a position with this responsibility.

6350 As used in this section, "hire for compensated employment" does not include (i) a promotion from  
6351 one adult substance abuse treatment position to another such position within the same community  
6352 services board or (ii) new employment in an adult substance abuse treatment position in another office  
6353 or program of the same community services board if the person employed prior to July 1, 1999, had no  
6354 convictions in the five years prior to the application date for employment. As used in this section, "hire  
6355 for compensated employment" includes (a) a promotion or transfer from an adult substance abuse  
6356 treatment position to any mental health or ~~mental retardation~~ *intellectual disability service* direct  
6357 consumer care position within the same community services board or (b) new employment in any  
6358 mental health or ~~mental retardation~~ *intellectual disability service* direct consumer care position in another  
6359 office or program of the same community services board for which the person has previously worked in  
6360 an adult substance abuse treatment position.

6361 B. Every community services board shall require any applicant who accepts employment in any  
6362 direct consumer care position with the community services board to submit to fingerprinting and provide  
6363 personal descriptive information to be forwarded through the Central Criminal Records Exchange to the  
6364 Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record  
6365 information regarding the applicant. Except as otherwise provided in subsections C or E, no community  
6366 services board shall hire for compensated employment persons who have been convicted of any offense  
6367 listed in subsection B of § 37.2-314.

6368 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no  
6369 record exists, shall submit a report to the requesting executive director or personnel director of the  
6370 community services board. If any applicant is denied employment because of information appearing on  
6371 the criminal history record and the applicant disputes the information upon which the denial was based,  
6372 the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the  
6373 procedures for obtaining a copy of the criminal history record from the FBI. The information provided  
6374 to the executive director or personnel director of any community services board shall not be  
6375 disseminated except as provided in this section.

6376 C. Notwithstanding the provisions of subsection B, the community services board may hire for  
6377 compensated employment at adult substance abuse treatment programs a person who was convicted of a  
6378 misdemeanor violation relating to (i) unlawful hazing, as set out in § 18.2-56; or (ii) reckless handling  
6379 of a firearm, as set out in § 18.2-56.1; or any misdemeanor or felony violation related to (a) reckless  
6380 endangerment of others by throwing objects, as set out in § 18.2-51.3; (b) threat, as set out in § 18.2-60;  
6381 (c) breaking and entering a dwelling house with intent to commit other misdemeanor, as set out in  
6382 § 18.2-92; or (d) possession of burglarious tools, as set out in § 18.2-94; or any felony violation relating  
6383 to the distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except  
6384 an offense pursuant to subsections H 1 or H 2 of § 18.2-248; or an equivalent offense in another state, if  
6385 the hiring community services board determines, based upon a screening assessment, that the criminal  
6386 behavior was substantially related to the applicant's substance abuse and that the person has been  
6387 successfully rehabilitated and is not a risk to consumers based on his criminal history background and  
6388 his substance abuse history.

6389 D. The community services board and a screening contractor designated by the Department shall  
6390 screen applicants who meet the criteria set forth in subsection C to assess whether the applicants have



been rehabilitated successfully and are not a risk to consumers based on their criminal history backgrounds and substance abuse histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the community services board or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the board decides to pay the cost.

E. Notwithstanding the provisions of subsection B, a community services board may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct consumer care position.

F. Community services boards also shall require, as a condition of employment for all applicants, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

G. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the community services board decides to pay the cost.

H. 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.

§ 37.2-508. Performance contract for mental health, intellectual disability, and substance abuse services.

A. The Department shall develop and initiate negotiation of the performance contracts through which it provides funds to community services boards to accomplish the purposes set forth in this chapter. In the case of operating boards, the Department may, notwithstanding any provision of law to the contrary, disburse state and federal funds appropriated to it for mental health, ~~mental retardation~~ *intellectual disability*, or substance abuse services directly to the operating board, when that operating board is authorized by the governing body of each city or county that established it to receive such funds. Six months prior to the beginning of each fiscal year, the Department shall make available to the public the standard performance contract form that it intends to use as the performance contract for that fiscal year and solicit public comments for a period of 60 days.

B. Any community services board may apply for the assistance provided in this chapter by submitting annually to the Department its proposed performance contract for the next fiscal year together with (i) the approval of its board of directors for operating and administrative policy boards or the comments of the local government department's policy-advisory board and (ii) the approval of the contract by formal vote of the governing body of each city or county that established it. The community services board shall make its proposed performance contract available for public review and solicit public comments for a period of 30 days prior to submitting its proposed contract for the approval of its board of directors for operating and administrative policy boards or the comments of the local government department's policy-advisory board. To avoid disruptions in service continuity and allow sufficient time to complete public review and comment about the contract and negotiation and approval of the contract, the Department may provide up to six semi-monthly payments of state-controlled funds to the community services board. If the governing body of each city or county does not approve the proposed performance contract by September 30 of each year, the performance contract shall be deemed approved.

C. The performance contract shall (i) delineate the responsibilities of the Department and the community services board; (ii) specify conditions that must be met for the receipt of state-controlled funds; (iii) identify the groups of consumers to be served with state-controlled funds; (iv) contain specific consumer outcome, provider performance, consumer satisfaction, and consumer and family member participation and involvement measures; (v) contain mechanisms that have been identified or developed jointly by the Department and community services board and that will be employed collaboratively by the community services board and the state hospital to manage the utilization of state hospital beds; (vi) establish an enforcement mechanism, should a community services board fail to be in substantial compliance with its performance contract, including notice and appeal processes and provisions for remediation, withholding or reducing funds, methods of repayment of funds, and the Department's exercise of the provisions of subsection E; and (vii) include reporting requirements and revenue, cost, service, and consumer information displayed in a consistent, comparable format

6452 determined by the Department.

6453 The Department may provide for performance monitoring in order to determine whether the  
6454 community services boards are in substantial compliance with their performance contracts.

6455 D. No community services board shall be eligible to receive state-controlled funds for mental health,  
6456 ~~mental retardation~~ *intellectual disability*, or substance abuse services after September 30 of each year  
6457 unless (i) its performance contract has been approved by the governing body of each city or county that  
6458 established it and by the Department; (ii) it provides service, cost, revenue, and aggregate and individual  
6459 consumer data and information, notwithstanding the provisions of § 37.2-400 or any regulations adopted  
6460 thereunder, to the Department in the format prescribed by the Department; and (iii) it uses standardized  
6461 cost accounting and financial management practices approved by the Department.

6462 E. If, after unsuccessful use of a remediation process described in the performance contract, a  
6463 community services board remains in substantial noncompliance with its performance contract with the  
6464 Department, the Department may, after affording the community services board an adequate opportunity  
6465 to use the appeal process described in the performance contract, terminate all or a portion of the  
6466 contract. Using the state-controlled resources associated with that contract, the Department, after  
6467 consulting with the governing body of each city or county that established the board, may negotiate a  
6468 performance contract with another board, a behavioral health authority, or a private nonprofit or  
6469 for-profit organization or organizations to obtain services that were the subject of the terminated  
6470 performance contract.

6471 § 37.2-509. Mental health, intellectual disability, and substance abuse services; allocation of funds by  
6472 Department; reduction of funds.

6473 A. At the beginning of each fiscal year, the Department shall allocate available state-controlled funds  
6474 to community services boards for disbursement in accordance with procedures established by the  
6475 Department and performance contracts approved by the Department. Allocations of state-controlled funds  
6476 to each community services board shall be determined by the Department, after careful consideration of  
6477 all of the following factors:

- 6478 1. The total amounts of state-controlled funds appropriated for this purpose;
- 6479 2. Previous allocations of state-controlled funds to each community services board;
- 6480 3. Requirements or conditions attached to appropriations of state-controlled funds by the General  
6481 Assembly, the Governor, or federal granting authorities;
- 6482 4. Community services board input about the uses of and methodologies for allocating existing and  
6483 new state-controlled funds; and
- 6484 5. Other relevant and appropriate considerations.

6485 Allocations to any community services board for operating expenses, including salaries and other  
6486 costs, or the construction of facilities shall not exceed 90 percent of the total amount of state and local  
6487 matching funds provided for these expenses or such construction, unless a waiver is granted by the  
6488 Department pursuant to policy adopted by the Board.

6489 B. The Department shall notify the governing body of each city or county that established the  
6490 community services board before implementing any reduction of state-controlled funds. Before any city  
6491 or county reduces local government matching funds, it shall notify its community services board and the  
6492 Department.

6493 C. All fees collected by the community services board shall be included in its performance contract  
6494 and retained and used by the board for mental health, ~~mental retardation~~ *intellectual disability*, and  
6495 substance abuse purposes.

6496 § 37.2-600. Definitions.

6497 As used in this chapter, unless the context requires a different meaning:

6498 "Behavioral health" means the full range of mental health, ~~mental retardation~~ *intellectual disability*,  
6499 and substance abuse services and treatment modalities.

6500 "Behavioral health authority board of directors" means the public body organized in accordance with  
6501 provisions of this chapter that is appointed by and accountable to the governing body of the city or  
6502 county that established it.

6503 "Behavioral health project" means any facility suitable for providing adequate care for concentrated  
6504 centers of population and includes structures, buildings, improvements, additions, extensions,  
6505 replacements, appurtenances, lands, rights in land, franchises, machinery, equipment, furnishings,  
6506 landscaping, approaches, roadways, and other necessary or desirable facilities.

6507 "Member" means a person appointed by the governing body of a city or county to the behavioral  
6508 health authority board of directors.

6509 § 37.2-601. Behavioral health authorities; purpose.

6510 The Department, for the purposes of establishing, maintaining, and promoting the development of  
6511 behavioral health services in the Commonwealth, may provide funds to assist certain cities or counties in  
6512 the provision of these services.

6513 The governing body of the Cities of Virginia Beach or Richmond or the County of Chesterfield may

establish a behavioral health authority and shall declare its intention to do so by resolution.

The behavioral health services provided by behavioral health authorities within the cities or counties they serve shall include emergency services and, subject to the availability of funds appropriated for them, case management services. The behavioral health services may include a comprehensive system of inpatient, outpatient, day support, residential, prevention, early intervention, and other appropriate mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse services necessary to provide individualized services and supports to persons with mental illnesses, ~~mental retardation~~ *intellectual disability*, or substance abuse.

In order to provide comprehensive mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse services within a continuum of care, the behavioral health authority shall function as the single point of entry into publicly funded mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse services.

§ 37.2-605. Behavioral health authorities; powers and duties.

Every authority shall be deemed to be a public instrumentality, exercising public and essential governmental functions to provide for the public mental health, welfare, convenience, and prosperity of the residents and such other persons who might be served by the authority and to provide behavioral health services to those residents and persons. An authority shall have the following powers and duties:

1. Review and evaluate public and private community mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse services and facilities that receive funds from the authority and advise the governing body of the city or county that established it as to its findings.

2. Pursuant to § 37.2-608, submit to the governing body of the city or county that established the authority an annual performance contract for community mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse services for its approval prior to submission of the contract to the Department.

3. Within amounts appropriated for this purpose, provide services authorized under the performance contract.

4. In accordance with its approved performance contract, enter into contracts with other providers for the delivery of services or operation of facilities.

5. Make and enter into all other contracts or agreements as the authority may determine that are necessary or incidental to the performance of its duties and to the execution of powers granted by this chapter, including contracts with any federal agency, any subdivision or instrumentality of the Commonwealth, behavioral health providers, insurers, and managed care or health care networks on such terms and conditions as the authority may approve.

6. Make policies or regulations concerning the delivery of services and operation of facilities under its direction or supervision, subject to applicable policies and regulations adopted by the Board.

7. Appoint a chief executive officer of the behavioral health authority, who meets the minimum qualifications established by the Department, and prescribe his duties. The compensation of the chief executive officer shall be fixed by the authority within the amounts made available by appropriation for this purpose. The chief executive officer shall serve at the pleasure of the authority's board of directors and be employed under an annually renewable contract that contains performance objectives and evaluation criteria. The Department shall approve the selection of the chief executive officer for adherence to minimum qualifications established by the Department and the salary range of the chief executive officer.

8. Authorize the chief executive officer to maintain a complement of professional staff to operate the behavioral health authority's service delivery system.

9. Prescribe a reasonable schedule of fees for services provided by personnel or facilities under the jurisdiction or supervision of the authority and establish procedures for the collection of those fees. All fees collected shall be included in the performance contract submitted to the local governing body pursuant to subdivision 2 of this section and § 37.2-608 and shall be used only for community mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse purposes. Every authority shall institute a reimbursement system to maximize the collection of fees from persons receiving services under the jurisdiction or supervision of the authority, consistent with the provisions of § 37.2-612, and from responsible third party payors. Authorities shall not attempt to bill or collect fees for time spent participating in commitment hearings for involuntary admissions pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8.

10. Accept or refuse gifts, donations, bequests, or grants of money or property or other assistance from the federal government, the Commonwealth, any municipality thereof, or any other sources, public or private; utilize them to carry out any of its purposes; and enter into any agreement or contract regarding or relating to the acceptance, use, or repayment of any such grant or assistance.

11. Seek and accept funds through federal grants. In accepting federal grants, the authority shall not bind the governing body of the city or county that established it to any expenditures or conditions of

6575 acceptance without the prior approval of that governing body.

6576 12. Notwithstanding any provision of law to the contrary, disburse funds appropriated to it in  
6577 accordance with applicable regulations.

6578 13. Apply for and accept loans in accordance with regulations established by the board of directors.

6579 14. Develop joint written agreements, consistent with policies adopted by the Board, with local  
6580 school divisions; health departments; local boards of social services; housing agencies, where they exist;  
6581 courts; sheriffs; area agencies on aging; and regional Department of Rehabilitative Services offices. The  
6582 agreements shall specify the services to be provided to consumers. All participating agencies shall  
6583 develop and implement the agreements and shall review the agreements annually.

6584 15. Develop and submit to the Department the necessary information for the preparation of the  
6585 Comprehensive State Plan for mental health, ~~mental retardation~~ *intellectual disability*, and substance  
6586 abuse services pursuant to § 37.2-315.

6587 16. Take all necessary and appropriate actions to maximize the involvement and participation of  
6588 consumers and family members of consumers in policy formulation and service planning, delivery, and  
6589 evaluation.

6590 17. Institute, singly or in combination with community services boards or other behavioral health  
6591 authorities, a dispute resolution mechanism that is approved by the Department and enables consumers  
6592 and family members of consumers to resolve concerns, issues, or disagreements about services without  
6593 adversely affecting their access to or receipt of appropriate types and amounts of current or future  
6594 services from the authority.

6595 18. Notwithstanding the provisions of § 37.2-400 and regulations adopted thereunder, release data and  
6596 information about individual consumers to the Department, so long as the Department implements  
6597 procedures to protect the confidentiality of that data and information. Every authority shall submit data  
6598 on children and youth in the same manner as community services boards, as set forth in § 37.2-507.

6599 19. Fulfill all other duties and be subject to applicable provisions specified in the Code of Virginia  
6600 pertaining to community services boards.

6601 20. Make loans and provide other assistance to corporations, partnerships, associations, joint ventures,  
6602 or other entities in carrying out any activities authorized by this chapter.

6603 21. Transact its business, locate its offices and control, directly or through stock or nonstock  
6604 corporations or other entities, facilities that will assist the authority in carrying out the purposes and  
6605 intent of this chapter, including without limitations the power to own or operate, directly or indirectly,  
6606 behavioral health facilities in its service area.

6607 22. Acquire property, real or personal, by purchase, gift, or devise on such terms and conditions and  
6608 in such manner as it may deem proper and such rights, easements, or estates therein as may be  
6609 necessary for its purposes and sell, lease, and dispose of the same or any portion thereof or interest  
6610 therein, whenever it shall become expedient to do so.

6611 23. Participate in joint ventures with individuals, corporations, partnerships, associations, or other  
6612 entities for providing behavioral health care or related services or other activities that the authority may  
6613 undertake to the extent that such undertakings assist the authority in carrying out the purposes and intent  
6614 of this chapter.

6615 24. Conduct or engage in any lawful business, activity, effort, or project that is necessary or  
6616 convenient for the purposes of the authority or for the exercise of any of its powers.

6617 25. As a public instrumentality, establish and operate its administrative management infrastructure in  
6618 whole or in part independent of the local governing body; however, nothing in the chapter precludes  
6619 behavioral health authorities from acquiring support services through existing governmental entities.

6620 26. Carry out capital improvements and bonding through existing economic or industrial development  
6621 authorities.

6622 27. Establish retirement, group life insurance, and group accident and sickness insurance plans or  
6623 systems for its employees in the same manner as cities, counties, and towns are permitted to do under  
6624 § 51.1-801.

6625 28. Provide an annual report to the Department of the authority's activities.

6626 29. Ensure a continuation of all consumer services during any transition period.

6627 § 37.2-608. Performance contract for mental health, intellectual disability, and substance abuse  
6628 services.

6629 A. The Department shall develop and initiate negotiation of the performance contracts through which  
6630 it provides funds to behavioral health authorities to accomplish the purposes set forth in this chapter.  
6631 The Department may, notwithstanding any provision of law to the contrary, disburse state and federal  
6632 funds appropriated to it for mental health, ~~mental retardation~~ *intellectual disability*, and substance abuse  
6633 services directly to the behavioral health authority. Six months prior to the beginning of each fiscal year,  
6634 the Department shall make available to the public the standard performance contract form that it intends  
6635 to use as the performance contract for that fiscal year and solicit public comments for a period of 60  
6636 days.

B. Any behavioral health authority may apply for the assistance provided in this chapter by submitting annually to the Department its proposed performance contract for the next fiscal year together with the approval of its board of directors and the approval by formal vote of the governing body of the city or county that established it. The behavioral health authority shall make its proposed performance contract available for public review and solicit public comments for a period of 30 days prior to submitting its proposed contract for the approval of its board of directors. To avoid disruptions in service continuity and allow sufficient time to complete public review and comment about the contract and negotiation and approval of the contract, the Department may provide up to six semi-monthly payments of state-controlled funds to the authority. If the governing body of the city or county does not approve the proposed performance contract by September 30 of each year, the performance contract shall be deemed approved.

C. The performance contract shall (i) delineate the responsibilities of the Department and the behavioral health authority; (ii) specify conditions that must be met for the receipt of state-controlled funds; (iii) identify the groups of consumers to be served with state-controlled funds; (iv) contain specific consumer, provider performance, consumer satisfaction, and consumer and family member participation and involvement measures; (v) contain mechanisms that have been identified or developed jointly by the Department and the behavioral health authority and that will be employed collaboratively by the behavioral health authority and the state hospital to manage the utilization of state hospital beds; (vi) establish an enforcement mechanism, should the behavioral health authority fail to be in substantial compliance with its performance contract, including notice and appeal processes and provisions for remediation, withholding or reducing funds, methods of repayment of funds, and the Department's exercise of the provisions of subsection E; and (vii) include reporting requirements and revenue, cost, service, and consumer information displayed in a consistent, comparable format determined by the Department.

The Department may provide for performance monitoring to determine whether behavioral health authorities are in substantial compliance with their performance contracts.

D. No behavioral health authority shall be eligible to receive state-controlled funds for mental health, ~~mental retardation~~ *intellectual disability*, or substance abuse services after September 30 of each year unless (i) its performance contract has been approved by the governing body of the city or county that established it and by the Department; (ii) it provides service, cost, revenue, and aggregate and individual consumer data and information, notwithstanding § 37.2-400 or any regulations adopted thereunder, to the Department in the format prescribed by the Department; and (iii), it uses standardized cost accounting and financial management practices approved by the Department.

E. If, after unsuccessful use of a remediation process described in the performance contract, a behavioral health authority remains in substantial noncompliance with its performance contract with the Department, the Department may, after affording the authority an adequate opportunity to use the appeal process described in the performance contract, terminate all or a portion of the contract. Using the state-controlled resources associated with that contract, the Department, after consulting with the governing body of the city or county that established the behavioral health authority, may negotiate a performance contract with a community services board, another behavioral health authority, or a private nonprofit or for-profit organization or organizations to obtain services that were the subject of the terminated performance contract.

§ 37.2-716. Mental Health, Intellectual Disability and Substance Abuse Services Revenue Fund.

All funds collected by the Department pursuant to this article shall be paid into a special fund of the state treasury that shall be known and referred to as the Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services Revenue Fund.

This fund shall be appropriated and used for the operation of the Department and its state facilities for research and training. Unexpended funds in the Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services Revenue Fund at the close of any fiscal year shall be retained in the fund and be available for expenditure in ensuing years as provided herein.

§ 37.2-802. Interpreters in admission or certification proceedings.

A. In any proceeding pursuant to § 37.2-806 or §§ 37.2-809 through 37.2-820 in which a person who is deaf is alleged to have ~~mental retardation~~ *an intellectual disability* or mental illness, an interpreter for the person shall be appointed by the district court judge or special justice before whom the proceeding is pending from a list of qualified interpreters provided by the Department for the Deaf and Hard-of-Hearing. The interpreter shall be compensated as provided for in § 37.2-804.

B. In any proceeding pursuant to § 37.2-806 or §§ 37.2-809 through 37.2-820 in which a non-English-speaking person is alleged to have ~~mental retardation~~ *an intellectual disability* or mental illness or is a witness in such proceeding, an interpreter for the person shall be appointed by the district court judge or special justice, or in the case of §§ 37.2-809 through 37.2-813 a magistrate, before whom the proceeding is pending. Failure to appoint an interpreter when an interpreter is not reasonably

6698 available or when the person's level of English fluency cannot be determined shall not be a basis to  
6699 dismiss the petition or void the order entered at the proceeding. The compensation for the interpreter  
6700 shall be fixed by the court in accordance with the guidelines set by the Judicial Council of Virginia and  
6701 shall be paid out of the state treasury.

6702 § 37.2-806. Judicial certification of eligibility for admission of persons with intellectual disabilities.

6703 A. Whenever a person alleged to have ~~mental retardation~~ *an intellectual disability* is not capable of  
6704 requesting admission to a training center pursuant to § 37.2-805, a parent or guardian of the person or  
6705 another responsible person may initiate a proceeding to certify the person's eligibility for admission  
6706 pursuant to this section.

6707 B. Prior to initiating the proceeding, the parent or guardian or other responsible person seeking the  
6708 person's admission shall first obtain (i) a preadmission screening report that recommends admission to a  
6709 training center from the community services board or behavioral health authority that serves the city or  
6710 county where the person who is alleged to have ~~mental retardation~~ *an intellectual disability* resides and  
6711 (ii) the approval of the training center to which it is proposed that the person be admitted. The Board  
6712 shall adopt regulations establishing the procedure and standards for the issuance of such approval. These  
6713 regulations may include provision for the observation and evaluation of the person in a training center  
6714 for a period not to exceed 48 hours. No person alleged to have ~~mental retardation~~ *an intellectual*  
6715 *disability* who is the subject of a proceeding under this section shall be detained on that account pending  
6716 the hearing except for observation and evaluation pursuant to the provisions of this subsection.

6717 C. Upon the filing of a petition in any city or county alleging that the person has ~~mental~~  
6718 ~~retardation~~ *an intellectual disability*, is in need of training, treatment, or habilitation, and has been  
6719 approved for admission pursuant to subsection B of this section, a proceeding to certify the person's  
6720 eligibility for admission to the training center may be commenced. The petition shall be filed with any  
6721 district court or special justice. A copy of the petition shall be personally served on the person named in  
6722 the petition, his attorney, and his guardian or conservator. Prior to any hearing under this section, the  
6723 judge or special justice shall appoint an attorney to represent the person. However, the person shall not  
6724 be precluded from employing counsel of his choosing and at his expense.

6725 D. The person who is the subject of the hearing shall be allowed sufficient opportunity to prepare his  
6726 defense, obtain independent evaluations and expert opinion at his own expense, and summons other  
6727 witnesses. He shall be present at any hearing held under this section, unless his attorney waives his right  
6728 to be present and the judge or special justice is satisfied by a clear showing and after personal  
6729 observation that the person's attendance would subject him to substantial risk of physical or emotional  
6730 injury or would be so disruptive as to prevent the hearing from taking place.

6731 E. Notwithstanding the above, the judge or special justice shall summons either a physician or a  
6732 clinical psychologist who is licensed in Virginia and is qualified in the assessment of persons with  
6733 ~~mental retardation~~ *intellectual disabilities* or a person designated by the local community services board  
6734 or behavioral health authority who meets the qualifications established by the Board. The physician,  
6735 clinical psychologist, or community services board or behavioral health authority designee may be the  
6736 one who assessed the person pursuant to subsection B of this section. The judge or special justice also  
6737 shall summons other witnesses when so requested by the person or his attorney. The physician, clinical  
6738 psychologist, or community services board or behavioral health authority designee shall certify that he  
6739 has personally assessed the person and has probable cause to believe that the person (i) does or does not  
6740 have ~~mental retardation~~ *an intellectual disability*, (ii) is or is not eligible for a less restrictive service, and  
6741 (iii) is or is not in need of training, treatment, or habilitation in a training center. The judge or special  
6742 justice may accept written certification of a finding of a physician, clinical psychologist, or community  
6743 services board or behavioral health authority designee, provided such assessment has been personally  
6744 made within the preceding 30 days and there is no objection to the acceptance of the written  
6745 certification by the person or his attorney.

6746 F. If the judge or special justice, having observed the person and having obtained the necessary  
6747 positive certification and other relevant evidence, specifically finds that (i) the person is not capable of  
6748 requesting his own admission, (ii) the training center has approved the proposed admission pursuant to  
6749 subsection B of this section, (iii) there is no less restrictive alternative to training center admission,  
6750 consistent with the best interests of the person who is the subject of the proceeding, and (iv) the person  
6751 has ~~mental retardation~~ *an intellectual disability* and is in need of training, treatment, or habilitation in a  
6752 training center, the judge or special justice shall by written order certify that the person is eligible for  
6753 admission to a training center.

6754 G. Certification of eligibility for admission hereunder shall not be construed as a judicial  
6755 commitment for involuntary admission of the person but shall authorize the parent or guardian or other  
6756 responsible person to admit the person to a training center and shall authorize the training center to  
6757 accept the person.

6758 § 37.2-900. Definitions.

6759 As used in this chapter, unless the context requires a different meaning:

"Commissioner" means the Commissioner of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services.

"Defendant" means any person charged with a sexually violent offense who is deemed to be an unrestorably incompetent defendant pursuant to § 19.2-169.3 and is referred for commitment review pursuant to this chapter.

"Department" means the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services.

"Director" means the Director of the Department of Corrections.

"Mental abnormality" or "personality disorder" means a congenital or acquired condition that affects a person's emotional or volitional capacity and renders the person so likely to commit sexually violent offenses that he constitutes a menace to the health and safety of others.

"Respondent" means the person who is subject of a petition filed under this chapter.

"Sexually violent offense" means a felony under (i) former § 18-54, former § 18.1-44, subdivision 5 of § 18.2-31, § 18.2-61, 18.2-67.1, or 18.2-67.2; (ii) § 18.2-48 (ii), 18.2-48 (iii), 18.2-63, 18.2-64.1, or 18.2-67.3; (iii) subdivision 1 of § 18.2-31 where the abduction was committed with intent to defile the victim; (iv) § 18.2-32 when the killing was in the commission of, or attempt to commit rape, forcible sodomy, or inanimate or animate object sexual penetration; (v) the laws of the Commonwealth for a forcible sexual offense committed prior to July 1, 1981, where the criminal behavior is set forth in § 18.2-67.1 or 18.2-67.2, or is set forth in § 18.2-67.3; or (vi) conspiracy to commit or attempt to commit any of the above offenses.

"Sexually violent predator" means any person who (i) has been convicted of a sexually violent offense or has been charged with a sexually violent offense and is unrestorably incompetent to stand trial pursuant to § 19.2-169.3 and (ii) because of a mental abnormality or personality disorder, finds it difficult to control his predatory behavior, which makes him likely to engage in sexually violent acts.

§ 37.2-900.1. Office of Sexually Violent Predator Services.

There is hereby established within the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, the Office of Sexually Violent Predator Services for the purpose of administering the duties of the Department under this chapter.

§ 37.2-909. Placement of committed persons.

A. Any person committed pursuant to this chapter shall be placed in the custody of the Department for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person will not present an undue risk to public safety. The Department shall provide such control, care, and treatment at a secure facility operated by it or may contract with private or public entities, in or outside of the Commonwealth, or with other states to provide comparable control, care, or treatment. At all times, persons committed for control, care, and treatment by the Department pursuant to this chapter shall be kept in a secure facility. Persons committed under this chapter shall be segregated by sight and sound at all times from prisoners in the custody of a correctional facility. The Commissioner may make treatment and management decisions regarding committed persons in his custody without obtaining prior approval of or review by the committing court.

B. Prior to the siting of a new facility or the designation of an existing facility to be operated by the Department for the control, care, and treatment of persons convicted of a sexually violent offense who have been referred for civil commitment, the Commissioner shall notify the state elected officials for and the local governing body of the jurisdiction of the proposed location, designation, or expansion of the facility. Upon receiving such notice, the local governing body of the jurisdiction of the proposed site or where the existing facility is located may publish a descriptive notice concerning the proposed site or existing facility in a newspaper of general circulation in the jurisdiction.

The Commissioner also shall establish an advisory committee relating to any facility for which notice is required by this subsection or any facility being operated for the purpose of the control, care, and treatment of persons convicted of a sexually violent offense who have been referred for civil commitment. The advisory committee shall consist of state and local elected officials and representatives of community organizations serving the jurisdiction in which the facility is proposed to be or is located. Upon request, the members of the appropriate advisory committee shall be notified whenever the Department increases the number of beds in the relevant facility.

C. Notwithstanding any other provision of law, when any person is committed under this article, the Department of Corrections and the Office of the Attorney General shall provide to the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, a copy of all relevant criminal history information, medical and mental health records, presentence or postsentence reports and victim impact statements, and the mental health evaluations performed pursuant to subsection B of § 37.2-904 and § 37.2-907, for use in the treatment and evaluation of the committed person.

§ 37.2-912. Conditional release; criteria; conditions; reports.

A. At any time the court considers the respondent's need for secure inpatient treatment pursuant to

6821 this chapter, it shall place the respondent on conditional release if it finds that (i) he does not need  
6822 secure inpatient treatment but needs outpatient treatment or monitoring to prevent his condition from  
6823 deteriorating to a degree that he would need secure inpatient treatment; (ii) appropriate outpatient  
6824 supervision and treatment are reasonably available; (iii) there is significant reason to believe that the  
6825 respondent, if conditionally released, would comply with the conditions specified; and (iv) conditional  
6826 release will not present an undue risk to public safety. In making its determination, the court may  
6827 consider (i) the nature and circumstances of the sexually violent offense for which the respondent was  
6828 charged or convicted, including the age and maturity of the victim; (ii) the results of any actuarial test,  
6829 including the likelihood of recidivism; (iii) the results of any diagnostic tests previously administered to  
6830 the respondent under this chapter; (iv) the respondent's mental history, including treatments for mental  
6831 illness or mental disorders, participation in and response to therapy or treatment, and any history of  
6832 previous hospitalizations; (v) the respondent's present mental condition; (vi) the respondent's response to  
6833 treatment while in secure inpatient treatment or on conditional release, including his disciplinary record  
6834 and any infractions; (vii) the respondent's living arrangements and potential employment if he were to be  
6835 placed on conditional release; (viii) the availability of transportation and appropriate supervision to  
6836 ensure participation by the respondent in necessary treatment; and (ix) any other factors that the court  
6837 deems relevant. The court shall subject the respondent to the orders and conditions it deems will best  
6838 meet his need for treatment and supervision and best serve the interests of justice and society. In all  
6839 cases of conditional release, the court shall order the respondent to be subject to electronic monitoring of  
6840 his location by means of a GPS (Global Positioning System) tracking device, or other similar device, at  
6841 all times while he is on conditional release. A continuance extending the review may be granted to  
6842 either the Attorney General or the respondent upon good cause shown or by agreement of the parties.

6843 The Department or, if the respondent is on parole or probation, the respondent's parole or probation  
6844 officer shall implement the court's conditional release orders and shall submit written reports to the court  
6845 on the respondent's progress and adjustment in the community no less frequently than every six months.  
6846 The Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse  
6847 Services is authorized to contract with the Department of Corrections to provide services for the  
6848 monitoring and supervision of sexually violent predators who are on conditional release.

6849 The Department or, if the respondent is on parole or probation, the respondent's parole or probation  
6850 officer shall send a copy of each written report submitted to the court and copies of all correspondence  
6851 with the court pursuant to this section to the Attorney General and the Commissioner.

6852 B. Notwithstanding any other provision of law, when any respondent is placed on conditional release  
6853 under this article, the Department of Corrections and the Office of the Attorney General shall provide to  
6854 the Department, or if the respondent is on parole or probation, the respondent's parole or probation  
6855 officer, all relevant criminal history information, medical and mental health records, presentence and  
6856 postsentence reports and victim impact statements, and the mental health evaluations performed pursuant  
6857 to this chapter, for use in the management and treatment of the respondent placed on conditional release.  
6858 Any information or document provided pursuant to this subsection shall not be subject to disclosure  
6859 under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

6860 § 37.2-919. Postrelease supervision of Department; commission of new criminal offense by person  
6861 committed to Department.

6862 A. If a person committed to the Department of Mental Health, ~~Mental Retardation~~ *Intellectual*  
6863 *Disability* and Substance Abuse Services, whether in involuntary secure inpatient treatment or on  
6864 conditional release, who is also on probation, parole, or postrelease supervision, fails to comply with any  
6865 conditions established by the Department, or fails to comply with the terms of a treatment plan, the  
6866 Department shall so notify the Department of Corrections or the person's probation and parole officer.

6867 B. If a person committed to the Department of Mental Health, ~~Mental Retardation~~ *Intellectual*  
6868 *Disability* and Substance Abuse Services is arrested for a felony or Class 1 or 2 misdemeanor offense,  
6869 he shall be transported to a judicial officer forthwith for a bond determination in accordance with the  
6870 provisions of § 19.2-80. If the judicial officer admits the accused to bail, he shall, upon his admission to  
6871 bail, be immediately transported back into the custody of the Department of Mental Health, ~~Mental~~  
6872 ~~Retardation~~ *Intellectual Disability* and Substance Abuse Services. If, after trial for this offense, no active  
6873 period of incarceration is imposed, or if the person is acquitted or the charges are withdrawn or  
6874 dismissed, he shall be returned to the Department of Mental Health, ~~Mental Retardation~~ *Intellectual*  
6875 *Disability* and Substance Abuse Services pursuant to his commitment. If a period of active incarceration  
6876 of 12 months or longer is imposed or any suspended sentence is revoked resulting in the person being  
6877 returned to the Department of Corrections for a period of active incarceration of 12 months or longer,  
6878 the person shall not be entitled to an annual or biennial review hearing pursuant to § 37.2-910 until 12  
6879 months after he has been returned to the custody of the Commissioner. Such reincarceration shall toll  
6880 the provisions of § 37.2-910.

6881 § 37.2-1018. Discovery of information and records regarding actions of certain agents and  
6882 attorneys-in-fact.



A. For purposes of this section:

"Member of the principal's family" means an adult who is a parent, brother or sister, niece or nephew, child or other descendent, spouse of a child of the principal, and spouse or surviving spouse of the principal.

"Person who is or was interested in the welfare of a principal" means any member of the principal's family; a person who is a co-agent or co-attorney-in-fact, an alternate agent or attorney-in-fact, or a successor agent or attorney-in-fact designated under the power of attorney or other writing described in § 11-9.1; and, if none of these persons is reasonably available and willing to act, the adult protective services unit of the local department of social services for the city or county where the principal resides or is located at the time of the request or where a deceased principal resided at the time of his death. Further, in the case of a deceased principal, the term also means a personal representative of the estate of a deceased principal.

"Principal believed to be unable to properly attend to his affairs" means an individual believed in good faith by the petitioner to be a person who is impaired by reason of mental illness, ~~mental retardation~~ intellectual disability, physical illness or disability, substance abuse, or other causes to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.

B. After having first made a request to an agent or attorney-in-fact for disclosure under § 11-9.6, any person interested in the welfare of a principal believed to be unable to properly attend to his affairs may, for the purpose of obtaining information pertinent to the need or propriety of (i) instituting a proceeding under this chapter; (ii) terminating, suspending, or limiting the authority of an attorney-in-fact or other agent; or (iii) bringing a proceeding to hold the attorney-in-fact or other agent, or a transferee from such attorney-in-fact or other agent, liable for breach of duty or to recover particular assets or the value of such assets of a principal or deceased principal, petition a circuit court for discovery from the attorney-in-fact or other agent of information and records pertaining to actions taken pursuant to powers or authority conferred by a power of attorney or other writing described in § 11-9.1 within the time periods set forth under § 11-9.6.

C. The petition may be filed in the circuit court of the county or city in which the attorney-in-fact or agent resides or has his principal place of employment, or, if a nonresident, in any court in which a determination of incompetency or incapacity of the principal is proper under this title, or, if a conservator or guardian has been appointed for the principal, in the court that made the appointment. The court, after reasonable notice to the attorney-in-fact or agent and to the principal, if no guardian or conservator has been appointed, may conduct a hearing on the petition. The court, upon the hearing on the petition and upon consideration of the interest of the principal and his estate, may dismiss the petition or may enter such order or orders respecting discovery as it may deem appropriate, including an order that the attorney-in-fact or agent respond to all discovery methods that the petitioner might employ in a civil action or suit subject to the Rules of the Supreme Court of Virginia. Upon the failure of the agent or attorney-in-fact to make discovery, the court may make and enforce further orders respecting discovery that would be proper in a civil action subject to such Rules and may award expenses, including reasonable attorney's fees, as therein provided. Furthermore, upon completion of discovery, the court, if satisfied that prior to filing the petition the petitioner had requested the information or records that are the subject of ordered discovery pursuant to § 11-9.6, may, upon finding that the failure to comply with the request for information was unreasonable, order the attorney-in-fact or agent to pay the petitioner's expenses in obtaining discovery, including reasonable attorney's fees.

D. A determination to grant or deny in whole or in part discovery sought hereunder shall not be considered a finding regarding the competence, capacity, or impairment of the principal, nor shall the granting or denial of discovery hereunder preclude the availability of other remedies involving protection of the person or estate of the principal or the rights and duties of the attorney-in-fact or other agent.

§ 37.2-1101. Judicial authorization of treatment.

A. An appropriate circuit court or district court judge or special justice may authorize treatment for a mental or physical disorder on behalf of an adult person, in accordance with this section, if it finds upon clear and convincing evidence that (i) the person is either incapable of making an informed decision on his own behalf or is incapable of communicating such a decision due to a physical or mental disorder and (ii) the proposed treatment is in the best interest of the person.

B. Any person may request authorization of treatment for an adult person by filing a petition in the circuit court or district court or with a special justice of the county or city in which the person for whom treatment is sought resides or is located or in the county or city in which the proposed place of treatment is located. Upon filing the petition, the petitioner or the court shall deliver or send a certified copy of the petition to the person for whom treatment is sought and, if the identity and whereabouts of the person's next of kin are known, to the next of kin.

C. As soon as reasonably possible after the filing of the petition, the court shall appoint an attorney to represent the interests of the person for whom treatment is sought at the hearing. However, the

6944 appointment shall not be required in the event that the person or another interested person on behalf of  
6945 the person elects to retain private counsel at his own expense to represent the interests of the person at  
6946 the hearing. If the person for whom treatment is sought is indigent, his counsel shall be paid by the  
6947 Commonwealth as provided in § 37.2-804 from funds appropriated to reimburse expenses incurred in the  
6948 involuntary admission process. However, this provision shall not be construed to prohibit the direct  
6949 payment of an attorney's fee by the person or an interested person on his behalf, which fee shall be  
6950 subject to the review and approval of the court.

6951 D. Following the appointment of an attorney pursuant to subsection C, the court shall schedule an  
6952 expedited hearing of the matter. The court shall notify the person for whom treatment is sought, his next  
6953 of kin, if known, the petitioner, and their respective counsel of the date and time for the hearing. In  
6954 scheduling the hearing, the court shall take into account the type and severity of the alleged physical or  
6955 mental disorder, as well as the need to provide the person's attorney with sufficient time to adequately  
6956 prepare his client's case.

6957 E. Notwithstanding the provisions of subsections B and D regarding delivery or service of the  
6958 petition and notice of the hearing to the next of kin of any person for whom consent to treatment is  
6959 sought, if the person is a patient in any hospital, including a hospital licensed by the Department of  
6960 Health pursuant to § 32.1-123 or a resident in any facility operated by the Department of Mental Health,  
6961 ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services and such person has no known  
6962 guardian or legally authorized representative, at the time the petition is filed, the court may dispense  
6963 with the requirement of any notice to the next of kin. If treatment is necessary to prevent imminent or  
6964 irreversible harm, the court in its discretion may dispense with the requirement of providing notice. This  
6965 subsection shall not be construed to interfere with any decision made pursuant to the Health Care  
6966 Decisions Act (§ 54.1-2981 et seq.).

6967 F. Prior to the hearing, the attorney shall investigate the risks and benefits of the treatment decision  
6968 for which authorization is sought and of alternatives to the proposed decision. The attorney shall make a  
6969 reasonable effort to inform the person of this information and to ascertain the person's religious beliefs  
6970 and basic values and the views and preferences of the person's next of kin. A health care provider shall  
6971 disclose or make available to the attorney, upon request, any information, records, and reports  
6972 concerning the person that the attorney determines necessary to perform his duties under this section.  
6973 Evidence presented at the hearing may be submitted by affidavit in the absence of objection by the  
6974 person for whom treatment is sought, the petitioner, either of their respective counsel, or by any other  
6975 interested party.

6976 G. Prior to authorizing treatment pursuant to this section, the court shall find:

6977 1. That there is no legally authorized representative available to give consent;

6978 2. That the person for whom treatment is sought is incapable of making an informed decision  
6979 regarding treatment or is physically or mentally incapable of communicating such a decision;

6980 3. That the person who is the subject of the petition is unlikely to become capable of making an  
6981 informed decision or of communicating an informed decision within the time required for decision; and

6982 4. That the proposed treatment is in the best interest of the person and is medically and ethically  
6983 appropriate with respect to (i) the medical diagnosis and prognosis and (ii) any other information  
6984 provided by the attending physician of the person for whom treatment is sought. However, the court  
6985 shall not authorize a proposed treatment that is proven by a preponderance of the evidence to be  
6986 contrary to the person's religious beliefs or basic values, unless the treatment is necessary to prevent  
6987 death or a serious irreversible condition. The court shall take into consideration the right of the person  
6988 to rely on nonmedical, remedial treatment in the practice of religion in lieu of medical treatment.

6989 H. Any order authorizing treatment pursuant to subsection A shall describe any treatment authorized  
6990 and may authorize generally such related examinations, tests, or services as the court may determine to  
6991 be reasonably related to the treatment authorized. Treatment authorized by such order may include  
6992 palliative care as defined in § 32.1-162.1, if appropriate. The order shall require the treating physician to  
6993 review and document the appropriateness of the continued administration of antipsychotic medications  
6994 not less frequently than every 30 days. The order shall require the treating physician or other service  
6995 provider to report to the court and the person's attorney any change in the person's condition resulting in  
6996 probable restoration or development of the person's capacity to make and to communicate an informed  
6997 decision prior to completion of any authorized treatment and related services. The order may further  
6998 require the treating physician or other service provider to report to the court and the person's attorney  
6999 any change in circumstances regarding any authorized treatment or related services that may indicate  
7000 that such authorization is no longer in the person's best interests. Upon receipt of such report or upon  
7001 the petition of any interested party, the court may enter an order withdrawing or modifying its prior  
7002 authorization as it deems appropriate. Any petition or order under this section may be orally presented  
7003 or entered, provided a written order shall be subsequently executed.

7004 § 38.2-3323. Group life insurance coverages of spouses and minor dependent children; dependent  
7005 handicapped children.

A. Coverage under a group life insurance policy, except a policy issued pursuant to § 38.2-3318.1 B, may be extended to insure the spouse and any child who is under the age of nineteen years or who is a dependent and a full-time student under twenty-five years of age, or any class of spouses and dependent children, of each insured group member who so elects. The amount of insurance on the life of a spouse or child shall not exceed the amount of insurance on the life of the insured group member.

B. A spouse insured under this section shall have the same conversion right to the insurance on his or her life as the insured group member.

C. Notwithstanding the provisions of § 38.2-3331, one certificate may be issued for each family unit if a statement concerning any spouse's or dependent child's coverage is included in the certificate.

D. In addition to the coverages afforded by the provisions of this section, any such plan for group life insurance which includes coverage for children shall afford coverage to any child who is both (i) incapable of self-sustaining employment by reason of ~~mental retardation~~ *intellectual disability* or physical handicap and (ii) chiefly dependent upon the employee for support and maintenance. Upon request of the insurer, proof of incapacity and dependency shall be furnished to the insurer by the policyowner within thirty-one days of the child's attainment of the specified age. Subsequent proof may be required by the insurer but not more frequently than annually after the two-year period following the child's attainment of the specified age. The insurer shall be allowed to charge a premium at the insurer's then customary rate applicable to such group policy for such extended coverage.

E. 1. Upon termination of such group coverage of a child, the child shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual life insurance policy without disability or other supplementary benefits, if:

a. An application for the individual policy is made, and the first premium paid to the insurer, within thirty-one days after such termination; and

b. The individual policy, at the option of such person, is on any one of the forms then customarily issued by the insurer at the age and for the amount applied for, except that the group policy may exclude the option to elect term insurance;

c. The individual policy is in an amount not in excess of the amount of life insurance which ceases because of such termination, less the amount of any life insurance for which such person becomes eligible under the same or any other group policy within thirty-one days after such termination, provided that any amount of insurance which has matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

d. The premium on the individual policy is at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to the individual age attained on the effective date of the individual policy.

2. Subject to the same conditions set forth above, the conversion privilege shall be available (i) to a surviving dependent, if any, at the death of the group member, with respect to the coverage under the group policy which terminates by reason of such death, and (ii) to the dependent of the group member upon termination of coverage of the dependent, while the group member remains insured under the group policy, by reason of the dependent ceasing to be a qualified family member under the group policy.

§ 38.2-3409. Coverage of dependent children.

A. Any group or individual accident and sickness insurance policy or subscription contract delivered or issued for delivery in this Commonwealth which provides that coverage of a dependent child shall terminate upon that child's attainment of a specified age, shall also provide in substance that attainment of the specified age shall not terminate the child's coverage during the continuance of the policy while the dependent child is and continues to be both: (i) incapable of self-sustaining employment by reason of ~~mental retardation~~ *intellectual disability* or physical handicap, and (ii) chiefly dependent upon the policyowner for support and maintenance.

B. Proof of incapacity and dependency shall be furnished to the insurer by the policyowner within thirty-one days of the child's attainment of the specified age. Subsequent proof may be required by the insurer but not more frequently than annually after the two-year period following the child's attainment of the specified age.

C. The insurer may charge an additional premium for any continuation of coverage beyond the specified age. The additional premium shall be determined by the insurer on the basis of the class of risks applicable to the child.

§ 38.2-3412.1. Coverage for mental health and substance abuse services.

A. As used in this section:

"Adult" means any person who is nineteen years of age or older.

"Alcohol or drug rehabilitation facility" means a facility in which a state-approved program for the

7067 treatment of alcoholism or drug addiction is provided. The facility shall be either (i) licensed by the  
7068 State Board of Health pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 or by the State Mental  
7069 Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services Board pursuant to  
7070 Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 or (ii) a state agency or institution.

7071 "Child or adolescent" means any person under the age of nineteen years.

7072 "Inpatient treatment" means mental health or substance abuse services delivered on a  
7073 twenty-four-hour per day basis in a hospital, alcohol or drug rehabilitation facility, an intermediate care  
7074 facility or an inpatient unit of a mental health treatment center.

7075 "Intermediate care facility" means a licensed, residential public or private facility that is not a  
7076 hospital and that is operated primarily for the purpose of providing a continuous, structured  
7077 twenty-four-hour per day, state-approved program of inpatient substance abuse services.

7078 "Medication management visit" means a visit no more than twenty minutes in length with a licensed  
7079 physician or other licensed health care provider with prescriptive authority for the sole purpose of  
7080 monitoring and adjusting medications prescribed for mental health or substance abuse treatment.

7081 "Mental health services" means treatment for mental, emotional or nervous disorders.

7082 "Mental health treatment center" means a treatment facility organized to provide care and treatment  
7083 for mental illness through multiple modalities or techniques pursuant to a written plan approved and  
7084 monitored by a physician, clinical psychologist, or a psychologist licensed to practice in this  
7085 Commonwealth. The facility shall be (i) licensed by the Commonwealth, (ii) funded or eligible for  
7086 funding under federal or state law, or (iii) affiliated with a hospital under a contractual agreement with  
7087 an established system for patient referral.

7088 "Outpatient treatment" means mental health or substance abuse treatment services rendered to a  
7089 person as an individual or part of a group while not confined as an inpatient. Such treatment shall not  
7090 include services delivered through a partial hospitalization or intensive outpatient program as defined  
7091 herein.

7092 "Partial hospitalization" means a licensed or approved day or evening treatment program that includes  
7093 the major diagnostic, medical, psychiatric and psychosocial rehabilitation treatment modalities designed  
7094 for patients with mental, emotional, or nervous disorders, and alcohol or other drug dependence who  
7095 require coordinated, intensive, comprehensive and multi-disciplinary treatment. Such a program shall  
7096 provide treatment over a period of six or more continuous hours per day to individuals or groups of  
7097 individuals who are not admitted as inpatients. Such term shall also include intensive outpatient  
7098 programs for the treatment of alcohol or other drug dependence which provide treatment over a period  
7099 of three or more continuous hours per day to individuals or groups of individuals who are not admitted  
7100 as inpatients.

7101 "Substance abuse services" means treatment for alcohol or other drug dependence.

7102 "Treatment" means services including diagnostic evaluation, medical, psychiatric and psychological  
7103 care, and psychotherapy for mental, emotional or nervous disorders or alcohol or other drug dependence  
7104 rendered by a hospital, alcohol or drug rehabilitation facility, intermediate care facility, mental health  
7105 treatment center, a physician, psychologist, clinical psychologist, licensed clinical social worker, licensed  
7106 professional counselor, licensed substance abuse treatment practitioner, licensed marriage and family  
7107 therapist or clinical nurse specialist who renders mental health services. Treatment for physiological or  
7108 psychological dependence on alcohol or other drugs shall also include the services of counseling and  
7109 rehabilitation as well as services rendered by a state certified alcoholism, drug, or substance abuse  
7110 counselor or substance abuse counseling assistant, limited to the scope of practice set forth in  
7111 § 54.1-3507.1 or § 54.1-3507.2, respectively, employed by a facility or program licensed to provide such  
7112 treatment.

7113 B. Each individual and group accident and sickness insurance policy or individual and group  
7114 subscription contract providing coverage on an expense-incurred basis for a family member of the  
7115 insured or the subscriber shall provide coverage for inpatient and partial hospitalization mental health  
7116 and substance abuse services as follows:

7117 1. Treatment for an adult as an inpatient at a hospital, inpatient unit of a mental health treatment  
7118 center, alcohol or drug rehabilitation facility or intermediate care facility for a minimum period of  
7119 twenty days per policy or contract year.

7120 2. Treatment for a child or adolescent as an inpatient at a hospital, inpatient unit of a mental health  
7121 treatment center, alcohol or drug rehabilitation facility or intermediate care facility for a minimum period  
7122 of twenty-five days per policy or contract year.

7123 3. Up to ten days of the inpatient benefit set forth in subdivisions 1 and 2 of this subsection may be  
7124 converted when medically necessary at the option of the person or the parent, as defined in § 16.1-336,  
7125 of a child or adolescent receiving such treatment to a partial hospitalization benefit applying a formula  
7126 which shall be no less favorable than an exchange of 1.5 days of partial hospitalization coverage for  
7127 each inpatient day of coverage. An insurance policy or subscription contract described herein which  
7128 provides inpatient benefits in excess of twenty days per policy or contract year for adults or twenty-five

days per policy or contract year for a child or adolescent may provide for the conversion of such excess days on the terms set forth in this subdivision.

4. The limits of the benefits set forth in this subsection shall not be more restrictive than for any other illness, except that the benefits may be limited as set out in this subsection.

5. This subsection shall not apply to short-term travel, accident only, limited or specified disease policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans.

C. Each individual and group accident and sickness insurance policy or individual and group subscription contract providing coverage on an expense-incurred basis for a family member of the insured or the subscriber shall also provide coverage for outpatient mental health and substance abuse services as follows:

1. A minimum of twenty visits for outpatient treatment of an adult, child or adolescent shall be provided in each policy or contract year.

2. The limits of the benefits set forth in this subsection shall be no more restrictive than the limits of benefits applicable to physical illness; however, the coinsurance factor applicable to any outpatient visit beyond the first five of such visits covered in any policy or contract year shall be at least fifty percent.

3. For the purpose of this section, medication management visits shall be covered in the same manner as a medication management visit for the treatment of physical illness and shall not be counted as an outpatient treatment visit in the calculation of the benefit set forth herein.

4. For the purpose of this subsection, if all covered expenses for a visit for outpatient mental health or substance abuse treatment apply toward any deductible required by a policy or contract, such visit shall not count toward the outpatient visit benefit maximum set forth in the policy or contract.

5. This subsection shall not apply to short-term travel, accident only, or limited or specified disease policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans.

D. The provisions of this section shall not be applicable to "biologically based mental illnesses," as defined in § 38.2-3412.1:01, unless coverage for any such mental illness is not otherwise available pursuant to the provisions § 38.2-3412.1:01.

E. The requirements of this section shall apply to all insurance policies and subscription contracts delivered, issued for delivery, reissued, or extended, or at any time when any term of the policy or contract is changed or any premium adjustment made.

§ 38.2-3418.5. Coverage for early intervention services.

A. Notwithstanding the provisions of § 38.2-3419, each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each corporation providing individual or group accident and sickness subscription contracts; and each health maintenance organization providing a health care plan for health care services shall provide coverage for medically necessary early intervention services under such policy, contract or plan delivered, issued for delivery or renewed in this Commonwealth on and after July 1, 1998. Such coverage shall be limited to a benefit of \$5,000 per insured or member per policy or calendar year and, except as set forth in subsection C, shall be subject to such dollar limits, deductibles and coinsurance factors as are no less favorable than for physical illness generally.

B. For the purpose of this section, "early intervention services" means medically necessary speech and language therapy, occupational therapy, physical therapy and assistive technology services and devices for dependents from birth to age three who are certified by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services as eligible for services under Part H of the Individuals with Disabilities Education Act (20 U.S.C. § 1471 et seq.). "Medically necessary early intervention services for the population certified by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services" shall mean those services designed to help an individual attain or retain the capability to function age-appropriately within his environment, and shall include services that enhance functional ability without effecting a cure.

C. The cost of early intervention services shall not be applied to any contractual provision limiting the total amount of coverage paid by the insurer, corporation or health maintenance organization to or on behalf of the insured or member during the insured's or member's lifetime.

D. "Financial costs," as used in this section, shall mean any copayment, coinsurance, or deductible in the policy or plan. Financial costs may be paid through the use of federal Part H program funds, state general funds, or local government funds appropriated to implement Part H services for families who may refuse the use of their insurance to pay for early intervention services due to a financial cost.

E. The provisions of this section shall not apply to short-term travel, accident only, limited or specified disease policies, policies or contracts designed for issuance to persons eligible for coverage

7190 under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under  
 7191 state or governmental plans or to short-term nonrenewable policies of not more than six months'  
 7192 duration.

7193 § 46.2-400. Suspension of license of person incompetent because of mental illness, mental deficiency,  
 7194 inebriety, or drug addiction; return of license; duty of clerk of court.

7195 The Commissioner, on receipt of notice that any person has been legally adjudged to be incapacitated  
 7196 in accordance with Article 1 (§ 37.2-1000 et seq.) of Chapter 10 of Title 37.2 or that a person  
 7197 discharged from an institution operated or licensed by the Department of Mental Health, ~~Mental Retardation~~  
 7198 ~~Intellectual Disability~~ and Substance Abuse Services is, in the opinion of the authorities of  
 7199 the institution, not competent because of mental illness, ~~mental retardation~~ ~~intellectual disability~~,  
 7200 inebriety, or drug addiction to drive a motor vehicle with safety to persons or property, shall forthwith  
 7201 suspend his license; but he shall not suspend the license if the person has been adjudged competent by  
 7202 judicial order or decree.

7203 In any case in which the person's license has been suspended prior to his discharge it shall not be  
 7204 returned to him unless the Commissioner is satisfied, after an examination such as is required of  
 7205 applicants by § 46.2-325, that the person is competent to drive a motor vehicle with safety to persons  
 7206 and property.

7207 The clerk of the court in which the adjudication is made shall forthwith send a certified copy or  
 7208 abstract of such adjudication to the Commissioner.

7209 § 46.2-401. Reports to Commissioner of discharge of patients from state institutions.

7210 Whenever practicable, at least ten days prior to the time when any patient is to be discharged from  
 7211 any institution operated or licensed by the Department of Mental Health, ~~Mental Retardation~~ ~~Intellectual~~  
 7212 ~~Disability~~ and Substance Abuse Services, if the mental condition of the patient is, because of mental  
 7213 illness, ~~mental retardation~~ ~~intellectual disability~~, inebriety, or drug addiction, in the judgment of the  
 7214 director or chief medical officer of the institution such as to prevent him from being competent to drive  
 7215 a motor vehicle with safety to persons and property, the director or chief medical officer shall forthwith  
 7216 report to the Commissioner, in sufficient detail for accurate identification, the date of discharge of the  
 7217 patient, together with a statement concerning his ability to drive a motor vehicle.

7218 § 46.2-1229. Enforcement of parking regulations of State Mental Health, Intellectual Disability and  
 7219 Substance Abuse Services Board.

7220 Any regulations of the State Mental Health, ~~Mental Retardation~~ ~~Intellectual Disability~~ and Substance  
 7221 Abuse Services Board pursuant to the provisions of § 37.2-203 relating to parking on property owned or  
 7222 controlled by the Board shall provide:

7223 1. That uncontested citations issued thereunder shall be paid to the administrative official or officials  
 7224 appointed under the provisions of this section in the locality in which the part of the hospital lies, who  
 7225 shall promptly deposit the sums into the state treasury as a special revenue of the Board; and

7226 2. That contested or delinquent citations shall be certified or complaint, summons, or warrant shall be  
 7227 issued as provided in § 46.2-1225 to the general district court in whose jurisdiction the hospital lies.  
 7228 Any sum collected by the court, minus court costs, shall be promptly deposited by the clerk into the  
 7229 state treasury as a special revenue of the Board.

7230 § 51.5-1. Declaration of policy.

7231 It is the policy of this Commonwealth to encourage and enable persons with disabilities to participate  
 7232 fully and equally in the social and economic life of the Commonwealth and to engage in remunerative  
 7233 employment. To these ends, the General Assembly directs the Governor, Virginia Office for Protection  
 7234 and Advocacy, Department for the Aging, Department for the Deaf and Hard-of-Hearing, Department of  
 7235 Education, Department of Health, Department of Housing and Community Development, Department of  
 7236 Mental Health, ~~Mental Retardation~~ ~~Intellectual Disability~~ and Substance Abuse Services, Board for Rights  
 7237 of Virginians with Disabilities, Department of Rehabilitative Services, Department of Social Services,  
 7238 Department for the Blind and Vision Impaired, and such other agencies as the Governor deems  
 7239 appropriate, to provide, in a comprehensive and coordinated manner which makes the best use of  
 7240 available resources, those services necessary to assure equal opportunity to persons with disabilities in  
 7241 the Commonwealth.

7242 The provisions of this title shall be known and may be cited as "The Virginians With Disabilities  
 7243 Act."

7244 § 51.5-2. Plan of cooperation.

7245 The Virginia Office for Protection and Advocacy, Department for the Aging, Department for the  
 7246 Deaf and Hard-of-Hearing, Department of Education, Department of Health, Department of Housing and  
 7247 Community Development, Department of Mental Health, ~~Mental Retardation~~ ~~Intellectual Disability~~ and  
 7248 Substance Abuse Services, Department of Rehabilitative Services, Department of Social Services,  
 7249 Department for the Blind and Vision Impaired and such other agencies as are designated by the  
 7250 Governor which serve persons with disabilities shall formulate a plan of cooperation in accordance with  
 7251 the provisions of this title and the federal Rehabilitation Act. The goal of this plan shall be to promote

the fair and efficient provision of rehabilitative and other services to persons with disabilities and to protect the rights of persons with disabilities.

The plan of cooperation shall include an annual update of budgetary commitment under the plan, specifying how many persons with disabilities, by type of impairment, will be served under the plan. The plan of cooperation shall include consideration of first pay provisions for entitlement programs of a cooperating agency. If entitlement services are part of a client's individualized written rehabilitation program or equivalent plan for services, funds shall be paid from the entitlement program when possible. The plan and budgetary commitments shall be reviewed by the respective boards of the cooperating agencies, reviewed by the Virginia Board for People with Disabilities and submitted for approval to the appropriate secretaries within the Governor's Office before implementation.

§ 51.5-3. Definitions.

As used in this title except where the context requires a different meaning or where it is otherwise provided, the following words shall have the meaning ascribed to them:

"Case management" is a dynamic collaborative process that utilizes and builds on the strengths and resources of consumers to assist them in identifying their needs, accessing and coordinating services, and achieving their goals. The major collaborative components of case management services include advocacy, assessment, planning, facilitation, coordination, and monitoring.

"Case management system" is a central point of contact linking a wide variety of evolving services and supports that are (i) available in a timely, coordinated manner, (ii) physically and programmatically accessible, and (iii) consumer-directed with procedural safeguards to ensure responsiveness and accountability.

"Client" means any person receiving a service provided by the personnel or facilities of a public or private agency, whether referred to as a client, participant, patient, resident, or other term.

"Commissioner" means the Commissioner of Rehabilitative Services.

"Consumer" is, with respect to case management services, a person with a disability or his designee, guardian, conservator or committee.

"Council" means the State Rehabilitation Council.

"Mental impairment" means (i) a disability attributable to ~~mental retardation~~ *intellectual disability*, autism, or any other neurologically handicapping condition closely related to ~~mental retardation~~ *intellectual disability* and requiring treatment similar to that required by ~~mentally retarded~~ *intellectually disabled* individuals; or (ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions, including central nervous system disorders or significant discrepancies among mental functions of an individual. For the purposes of § 51.5-41, the term "mental impairment" does not include active alcoholism or current drug addiction and does not include any mental impairment, disease or defect that has been successfully asserted by an individual as a defense to any criminal charge.

"Otherwise qualified person with a disability" means a person with a disability who:

1. For the purposes of § 51.5-41, is qualified to perform the duties of a particular job or position; or
2. For the purposes of § 51.5-42, meets all the requirements for admission to an educational institution or meets all the requirements for participation in its extracurricular programs.

"Person with a disability" means any person who has a physical or mental impairment that substantially limits one or more of his major life activities or has a record of such impairment and that:

1. For purposes of § 51.5-41, is unrelated to the individual's ability to perform the duties of a particular job or position, or is unrelated to the individual's qualifications for employment or promotion;
2. For purposes of § 51.5-42, is unrelated to the individual's ability to utilize and benefit from educational opportunities, programs, and facilities at an educational institution;
3. For purposes of § 51.5-44, is unrelated to the individual's ability to utilize and benefit from a place of public accommodation or public service;
4. For purposes of § 51.5-45, is unrelated to the individual's ability to acquire, rent, or maintain property.

"Physical impairment" means any physical condition, anatomic loss, or cosmetic disfigurement that is caused by bodily injury, birth defect, or illness.

"Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation.

§ 51.5-14.1. Cooperation of Department with other state departments.

The Department of Rehabilitative Services shall collaborate with the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services in activities related to licensing providers of (i) services under the Individual and Families Developmental Disabilities Support Waiver, (ii) services under the Brain Injury Waiver, and (iii) residential services for individuals with brain

injuries as defined in § 37.2-403. These activities include involving advocacy and consumer groups who represent persons with developmental disabilities or brain injuries in the regulatory process; training the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, local human rights committees and the State Human Rights Committee on the unique needs and preferences of individuals with developmental disabilities or brain injuries; assisting in the development of regulatory requirements for such providers; and providing technical assistance in the regulatory process and in performing annual inspections and complaint investigations.

§ 51.5-30. Cooperative agreements with community services boards and schools.

No services funded under the authority of this chapter shall be provided to:

1. Persons whose primary impairment is mental illness, ~~mental retardation~~ *intellectual disability*, or substance abuse, except by cooperative agreement with the local community services board established pursuant to Chapter 5 (§ 37.2-500 et seq.) of Title 37.2 when that board is currently offering the same services; or

2. Public school-aged persons, except by cooperative agreement with that person's school.

§ 51.5-31. Board created.

There shall be a Virginia Board for People with Disabilities, responsible to the Secretary of Health and Human Resources. The Board shall be composed of 40 members, to include the head or a person designated by the head of the Department for the Aging, Department for the Deaf and Hard-of-Hearing, Department of Education, Department of Medical Assistance Services, Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, Department of Rehabilitative Services, and the Department for the Blind and Vision Impaired; one representative of the protection and advocacy agency; one representative of the university-affiliated facility; one representative each, to be appointed by the Governor, of a local governmental agency, a manufacturing or a retailing industry, a high-technology industry, a public transit interest, and a nongovernmental agency or group of agencies that provide services for persons with developmental disabilities; a banking executive; one person with disabilities other than developmental disabilities; and 24 persons with developmental disabilities or the parents or guardians of such persons. Of the last 24 persons, at least eight shall be persons with developmental disabilities; at least eight shall be immediate relatives or guardians of persons with mentally impairing developmental disabilities; and at least one person shall be an immediate relative or guardian of an institutionalized person with a developmental disability.

Each member appointed by the Governor shall be appointed for a four-year term, except that of the members appointed in 1989, eight shall be appointed for a term of four years, eight shall be appointed for a term of three years, eight shall be appointed for a term of two years, and seven shall be appointed for a term of one year. Members so appointed shall be subject to removal at the pleasure of the Governor. Any vacancy other than by expiration of a term shall be filled for the unexpired term. No person appointed by the Governor shall serve for more than two successive terms.

The Board shall elect its chairman.

§ 51.5-39.2. The Virginia Office for Protection and Advocacy; governing board; terms; quorum; expenses; summary of annual work.

A. The Department for Rights of Virginians with Disabilities is hereby established as an independent state agency to be known as the Virginia Office for Protection and Advocacy. The Office is designated as the agency to protect and advocate for the rights of persons with mental, cognitive, sensory, physical or other disabilities and to receive federal funds on behalf of the Commonwealth of Virginia to implement the federal Protection and Advocacy for Individuals with Mental Illness Act, the federal Developmental Disabilities Assistance and Bill of Rights Act, the federal Rehabilitation Act, the Virginians with Disabilities Act and such other related programs as may be established by state and federal law. Notwithstanding any other provision of law, the Office shall be independent of the Office of the Attorney General and shall have the authority, pursuant to subdivision 5 of § 2.2-510, to employ and contract with legal counsel to carry out the purposes of this chapter and to employ and contract with legal counsel to advise and represent the Office, to initiate actions on behalf of the Office, and to defend the Office and its officers, agents and employees in the course and scope of their employment or authorization, in any matter, including state, federal and administrative proceedings. Compensation for legal counsel shall be paid out of the funds appropriated for the administration of the Office. However, in the event defense is provided under Article 5 (§ 2.2-1832 et seq.) of Chapter 18 of Title 2.2, counsel shall be appointed pursuant to subdivision 4 of § 2.2-510. The Office shall provide ombudsman, advocacy and legal services to persons with disabilities who may be represented by the Office. The Office is authorized to receive and act upon complaints concerning discrimination on the basis of disability, abuse and neglect or other denial of rights, and practices and conditions in institutions, hospitals, and programs for persons with disabilities, and to investigate complaints relating to abuse and neglect or other violation of the rights of persons with disabilities in proceedings under state or federal law, and to initiate any proceedings to secure the rights of such persons.

B. The Office shall be governed by an 11-member board consisting of 11 nonlegislative citizen



members. The members shall be appointed as follows: five citizens at large, of whom one shall be a person with a developmental disability or the parent, family member, guardian, advocate, or authorized representative of such an individual, one shall be a person with a physical disability or the parent, family member, guardian, advocate, or authorized representative of such an individual, one shall be a person who represents persons with cognitive disabilities, one shall be a person who represents persons with developmental disabilities, and one shall be a person who represents persons with sensory or physical disabilities, to be appointed by the Speaker of the House of Delegates; three citizens at large, of whom one shall be a person with a cognitive disability or the parent, family member, guardian, advocate, or authorized representative of such an individual, one shall be a person who represents persons with mental illnesses, and one shall be a person who represents people with mental or neurological disabilities, to be appointed by the Senate Committee on Rules; and three citizens at large, of whom one shall be a person with a mental illness or the parent, family member, guardian, advocate, or authorized representative of such an individual, one shall be a person with a sensory disability or the parent, family member, guardian, advocate, or authorized representative of such an individual, and one shall be a person with a mental or neurological disability or the parent, family member, guardian, advocate, or authorized representative of such an individual, to be appointed by the Governor. Persons appointed to the board to represent individuals with a disability shall be knowledgeable of the broad range of needs of such persons served by the Office. Persons appointed to the board who have a disability shall be individuals who are eligible for, are receiving, or have received services through the state system that protects and advocates for the rights of individuals with disabilities. In appointing the members of the Board, consideration shall be given to persons nominated by statewide groups that advocate for the physically, developmentally, and mentally disabled. The Virginia Office for Protection and Advocacy shall coordinate and provide to the appointing authorities the lists of nominations for each appointment. The Speaker of the House of Delegates, the Senate Committee on Rules and the Governor shall not be limited in their appointments to persons so nominated; however, such appointing authorities shall seriously consider the persons nominated and appoint such persons whenever feasible.

No member of the General Assembly, elected official, or current employee of the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, State Health Department, Department of Rehabilitative Services, Department for the Blind and Vision Impaired, Virginia Department for the Deaf and Hard-of-Hearing, a community services board, a behavioral health authority, or a local government department with a policy-advisory community services board shall be appointed to the Board.

C. Nonlegislative citizen members shall be appointed for a term of four years, following the initial staggering of terms. All members may be reappointed, except that any member appointed during the initial staggering of terms to a four-year term shall not be eligible for reappointment for two years after the expiration of his term. However, no nonlegislative citizen member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All appointments and reappointments shall be subject to confirmation at the next session of the General Assembly. All appointments shall be confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. Members shall continue to serve until such time as their successors have been appointed and duly qualified to serve.

D. The Board shall elect a chairman and a vice-chairman from among its members and appoint a secretary who may or may not be a member of the Board. A majority of the members of the Board shall constitute a quorum.

The Board shall meet at least four times each year. The meetings of the Board shall be held at the call of the chairman or whenever the majority of the voting members so request. The chairman shall perform such additional duties as may be established by resolution of the Board.

E. Members shall serve without compensation for their services; however, all members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of expenses of the members shall be provided by the Virginia Office for Protection and Advocacy.

F. Members of the Board shall be subject to removal from office only as set forth in Article 7 (§ 24.2-230 et seq.) of Chapter 2 of Title 24.2. The Circuit Court of the City of Richmond shall have exclusive jurisdiction over all proceedings for such removal.

G. The chairman of the Board shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Board no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents

7436 and reports and shall be posted to the General Assembly's website.

7437 § 51.5-39.7. (See Editor's note) Ombudsman services for persons with disabilities.

7438 A. There is hereby created within the Office an ombudsman section. The Director shall establish  
7439 procedures for receiving complaints and conducting investigations for the purposes of resolving and  
7440 mediating complaints regarding any activity, practice, policy, or procedure of any hospital, facility or  
7441 program operated, funded or licensed by the Department of Mental Health, ~~Mental~~  
7442 ~~Retardation~~ *Intellectual Disability* and Substance Abuse Services, the Department of Rehabilitative  
7443 Services, the Department of Social Services, or any other state or local agency, that is adversely  
7444 affecting the health, safety, welfare or civil or human rights of any person with mental, cognitive,  
7445 sensory or physical disabilities. After initial investigation, the section may decline to accept any  
7446 complaint it determines is frivolous or not made in good faith. The ombudsman section shall attempt to  
7447 resolve the complaint at the lowest appropriate level, unless otherwise provided by law. The procedures  
7448 shall require the section to:

7449 1. Acknowledge the receipt of a complaint by sending written notice to the complainant within seven  
7450 days after receiving the complaint;

7451 2. When appropriate, provide written notice of a complaint to the Department of Mental Health,  
7452 ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services or any other appropriate agency  
7453 within seven days after receiving the complaint. The Department or agency shall report its findings and  
7454 actions no later than fourteen days after receiving the complaint;

7455 3. Immediately refer a complaint made under this section to the Department of Mental Health,  
7456 ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services or any other appropriate  
7457 governmental agency whenever the complaint involves an immediate and substantial threat to the health  
7458 or safety of a person with ~~mental retardation~~ *intellectual disabilities*, developmental disabilities, mental  
7459 illness, or other disability. The Department or agency receiving the complaint shall report its findings  
7460 and actions no later than forty-eight hours following its receipt of the complaint;

7461 4. Within seven days after identifying a deficiency in the treatment of a person with a disability that  
7462 is in violation of state or federal law or regulation, refer the matter in writing to the appropriate state  
7463 agency. The state agency shall report on its findings and actions within seven days of receiving notice  
7464 of the matter;

7465 5. Advise the complainant and any person with a disability affected by the complaint, no more than  
7466 thirty days after it receives the complaint, of any action it has taken and of any opinions and  
7467 recommendations it has with respect to the complaint. The ombudsman section may request any party  
7468 affected by the opinions or recommendations to notify the section, within a time period specified by the  
7469 section, of any action the party has taken on its recommendation; and

7470 6. Refer any complaint not resolved through negotiation, mediation, or conciliation to the Director or  
7471 the Director's designee to determine whether further protection and advocacy services shall be provided  
7472 by the Office.

7473 B. The ombudsman section may make public any of its opinions or recommendations concerning a  
7474 complaint, the responses of persons and governmental agencies to its opinions or recommendations, and  
7475 any act, practice, policy, or procedure that adversely affects or may adversely affect the health, safety,  
7476 welfare, or civil or human rights of a person with a disability, subject to the provisions of § 51.5-39.8.

7477 C. The Office shall publicize its existence, functions, and activities, and the procedures for filing a  
7478 complaint under this section, and send this information in written form to each provider of services to  
7479 persons with disabilities, with instructions that the information is to be posted in a conspicuous place  
7480 accessible to patients, residents, consumers, clients, visitors, and employees. The Office shall establish,  
7481 maintain and publicize a toll-free number for receiving complaints.

7482 § 51.5-39.8. Confidentiality of information.

7483 A. All documentary and other evidence received or maintained by the Office or its agents in  
7484 connection with specific complaints or investigations shall be confidential and not subject to the  
7485 provisions concerning disclosure of public records under the Virginia Freedom of Information Act  
7486 (§ 2.2-3700 et seq.). However, access to one's own records shall not be denied unless otherwise  
7487 prohibited by state or federal law. Records concerning closed cases shall be subject to the disclosure  
7488 requirements of the Virginia Freedom of Information Act, but in a manner that does not identify any  
7489 complainant or any person with mental illness, ~~mental retardation~~ *intellectual disabilities*, developmental  
7490 disabilities or other disability, unless (i) such complainant or person or his legal representative consents  
7491 in writing to such identification or (ii) such identification is required by court order.

7492 B. Communications between employees and agents of the Office and its clients or prospective clients  
7493 concerning specific complaints, investigations or cases shall be confidential.

7494 C. Notwithstanding the provisions of this section, the Office shall be permitted to:

7495 1. Issue a public report of the results of an investigation of a founded complaint that does not release  
7496 the identity of any complainant or any person with mental illness, ~~mental retardation~~ *intellectual*  
7497 *disabilities*, developmental disabilities or other disability, unless (a) such complainant or person or his

legal representative consents in writing to such disclosure or (b) such disclosure is required by court order; and

2. Report the results of an investigation to responsible investigative or enforcement agencies should an investigation reveal information concerning any hospital, facility or other entity, its staff or employees, warranting possible sanctions or corrective action. This information may be reported to agencies responsible for licensing or accreditation, employee discipline, employee licensing or certification or criminal prosecution.

§ 51.5-39.12. Notification of critical incidents and deaths in state facilities.

Notwithstanding any other provision of law, the directors of the state facilities as defined in § 37.2-100 shall notify the Director of the Office in writing within forty-eight hours of critical incidents or deaths of patients or residents in state facilities. For purposes of this section, a critical incident shall be defined as serious bodily injury or loss of consciousness requiring medical treatment. The Commissioner of the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services shall provide to the Director of the Office a written report setting forth the known facts of critical incidents or deaths of patients or residents of facilities within fifteen working days of the critical incident or death.

§ 53.1-32. Treatment and control of prisoners; recreation; religious services.

A. It shall be the general purpose of the state correctional facilities to provide proper employment, training and education in accordance with Chapter 18 (§ 22.1-339 et seq.) of Title 22.1 and § 53.1-32.1, medical and mental health care and treatment, discipline and control of prisoners committed or transferred thereto. The health service program established to provide medical services to prisoners shall provide for appropriate means by which prisoners receiving nonemergency medical services may pay fees based upon a portion of the cost of such services. In no event shall any prisoner be denied medically necessary service due to his inability to pay. The Board shall promulgate regulations governing such a program.

B. The Director shall provide a program of recreation for prisoners. The Director may establish, with consultation from the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, a comprehensive substance abuse treatment program which may include utilization of acupuncture and other treatment modalities, and may make such program available to any prisoner requiring the services provided by the program.

C. The Director or his designee who shall be a state employee is authorized to make arrangements for religious services for prisoners at times as he may deem appropriate. When such arrangements are made pursuant to a contract or memorandum of understanding, the final authority for such arrangements shall reside with the Director or his designee.

§ 53.1-40.2. Involuntary admission of prisoners with mental illness.

A. Upon the petition of the Director or his designee, any district court judge or any special justice, as defined by § 37.2-100, of the county or city where the prisoner is located may issue an order authorizing involuntary admission of a prisoner who is sentenced and committed to the Department of Corrections and who is alleged or reliably reported to have a mental illness to a degree that warrants hospitalization.

B. Such prisoner may be involuntarily admitted to a hospital or facility for the care and treatment of persons with mental illness by complying with the following admission procedures:

1. A hearing on the petition shall be scheduled as soon as possible, allowing the prisoner an opportunity to prepare any defenses which he may have, obtain independent evaluation and expert opinion at his own expense, and summons other witnesses.

2. Prior to such hearing, the judge or special justice shall fully inform the prisoner of the allegations of the petition, the standard upon which he may be admitted involuntarily, the right of appeal from such hearing to the circuit court, and the right to jury trial on appeal. The judge or special justice shall ascertain if the prisoner is represented by counsel, and, if he is not represented by counsel, the judge or special justice shall appoint an attorney to represent the prisoner.

3. The judge or special justice shall require an examination of such prisoner by a psychiatrist who is licensed in Virginia or a clinical psychologist who is licensed in Virginia or, if such psychiatrist or clinical psychologist is not available, a physician or psychologist who is licensed in Virginia and who is qualified in the diagnosis of mental illness. The judge or special justice shall summons the examiner, who shall certify that he has personally examined the individual and has probable cause to believe that the prisoner does or does not have mental illness, does or does not present an imminent danger to himself or others, and does or does not require involuntary hospitalization. The judge or special justice may accept written certification of the examiner's findings if the examination has been personally made within the preceding five days and if there is no objection to the acceptance of such written certification by the prisoner or his attorney.

4. If the judge or special justice, after observing the prisoner and obtaining the necessary positive

7559 certification and other relevant evidence, finds specifically that (i) the prisoner presents an imminent  
7560 danger to himself or others as a result of mental illness or has been proven to be so seriously mentally  
7561 ill as to be substantially unable to care for himself, and (ii) alternatives to involuntary admission have  
7562 been investigated and deemed unsuitable and there is no less restrictive alternative to such admission,  
7563 the judge or special justice shall by written order and specific findings so certify and order that the  
7564 prisoner be placed in a hospital or other facility designated by the Director for a period not to exceed  
7565 180 days from the date of the court order. Such placement shall be in a hospital or other facility for the  
7566 care and treatment of persons with mental illness that is licensed or operated by the Department of  
7567 Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services.

7568 5. The judge or special justice shall also order that the relevant medical records of such prisoner be  
7569 released to the hospital, facility, or program in which he is placed upon request of the treating physician  
7570 or director of the hospital, facility, or program.

7571 6. The Department shall prepare the forms required in procedures for admission as approved by the  
7572 Attorney General. These forms, which shall be the legal forms used in such admissions, shall be  
7573 distributed by the Department to the clerks of the general district courts of the various counties and  
7574 cities of the Commonwealth and to the directors of the respective state hospitals.

7575 § 53.1-136. Powers and duties of Board; notice of release of certain inmates.

7576 In addition to the other powers and duties imposed upon the Board by this article, the Board shall:

7577 1. Adopt, subject to approval by the Governor, general rules governing the granting of parole and  
7578 eligibility requirements, which shall be published and posted for public review;

7579 2. (a) Release on parole for such time and upon such terms and conditions as the Board shall  
7580 prescribe, persons convicted of felonies and confined under the laws of the Commonwealth in any  
7581 correctional facility in Virginia when those persons become eligible and are found suitable for parole,  
7582 according to those rules adopted pursuant to subdivision 1;

7583 (b) Establish the conditions of postrelease supervision authorized pursuant to §§ 18.2-10 and  
7584 19.2-295.2 A;

7585 (c) Notify by certified mail at least 21 business days prior to release on discretionary parole of any  
7586 inmate convicted of a felony and sentenced to a term of 10 or more years, the attorney for the  
7587 Commonwealth in the jurisdiction where the inmate was sentenced. In the case of parole granted for  
7588 medical reasons, where death is imminent, the Commonwealth's Attorney may be notified by telephone  
7589 or other electronic means prior to release. Nothing in this subsection shall be construed to alter the  
7590 obligations of the Board under § 53.1-155 for investigation prior to release;

7591 (d) In any case where a person who is released on parole or postrelease supervision has been  
7592 committed to the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance  
7593 Abuse Services under the provisions of Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, the conditions of his  
7594 parole or postrelease supervision shall include the requirement that the person comply with all conditions  
7595 given him by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability*, and Substance  
7596 Abuse Services, and that he follow all of the terms of his treatment plan;

7597 3. Revoke parole and any period of postrelease and order the reincarceration of any parolee or felon  
7598 serving a period of postrelease supervision or impose a condition of participation in any component of  
7599 the Statewide Community-Based Corrections System for State-Responsible Offenders (§ 53.1-67.2 et  
7600 seq.) on any eligible parolee, when, in the judgment of the Board, he has violated the conditions of his  
7601 parole, postrelease supervision or is otherwise unfit to be on parole or on postrelease supervision;

7602 4. Issue final discharges to persons released by the Board on parole when the Board is of the opinion  
7603 that the discharge of the parolee will not be incompatible with the welfare of such person or of society;

7604 5. Make investigations and reports with respect to any commutation of sentence, pardon, reprieve or  
7605 remission of fine or penalty when requested by the Governor; and

7606 6. Publish monthly a statement regarding the action taken by the Board on the parole of prisoners.  
7607 The statement shall list the name of each prisoner considered for parole and indicate whether parole was  
7608 granted or denied, as well as the basis for denial of parole as described in subdivision 2 (a).

7609 § 53.1-145. Powers and duties of probation and parole officers.

7610 In addition to other powers and duties prescribed by this article, each probation and parole officer  
7611 shall:

7612 1. Investigate and report on any case pending in any court or before any judge in his jurisdiction  
7613 referred to him by the court or judge;

7614 2. Supervise and assist all persons within his territory placed on probation, secure, as appropriate and  
7615 when available resources permit, placement of such persons in a substance abuse treatment program  
7616 which may include utilization of acupuncture and other treatment modalities, and furnish every such  
7617 person with a written statement of the conditions of his probation and instruct him therein; if any such  
7618 person has been committed to the Department of Mental Health, ~~Mental Retardation~~ *Intellectual*  
7619 *Disability* and Substance Abuse Services under the provisions of Chapter 9 (§ 37.2-900 et seq.) of Title  
7620 37.2, the conditions of probation shall include the requirement that the person comply with all

conditions given him by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, and that he follow all of the terms of his treatment plan;

3. Supervise and assist all persons within his territory released on parole or postrelease supervision, secure, as appropriate and when available resources permit, placement of such persons in a substance abuse treatment program which may include utilization of acupuncture and other treatment modalities, and, in his discretion, assist any person within his territory who has completed his parole, postrelease supervision, or has been mandatorily released from any correctional facility in the Commonwealth and requests assistance in finding a place to live, finding employment, or in otherwise becoming adjusted to the community;

4. Arrest and recommit to the place of confinement from which he was released, or in which he would have been confined but for the suspension of his sentence or of its imposition, for violation of the terms of probation, post-release supervision pursuant to § 19.2-295.2 or parole, any probationer, person subject to post-release supervision or parolee under his supervision, or as directed by the Chairman, Board member or the court, pending a hearing by the Board or the court, as the case may be;

5. Keep such records, make such reports, and perform other duties as may be required of him by the Director or by regulations prescribed by the Board of Corrections, and the court or judge by whom he was authorized;

6. Order and conduct, in his discretion, drug and alcohol screening tests of any probationer, person subject to post-release supervision pursuant to § 19.2-295.2 or parolee under his supervision who the officer has reason to believe is engaged in the illegal use of controlled substances or marijuana or the abuse of alcohol. The cost of the test may be charged to the person under supervision. Regulations governing the officer's exercise of this authority shall be promulgated by the Board;

7. Have the power to carry a concealed weapon in accordance with regulations promulgated by the Board and upon the certification of appropriate training and specific authorization by a judge of a circuit court;

8. Provide services in accordance with any contract entered into between the Department of Corrections and the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services pursuant to § 37.2-912;

9. Pursuant to any contract entered into between the Department of Corrections and the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, probation and parole officers shall have the power to provide intensive supervision services to persons placed on conditional release, regardless of whether the person has any time remaining to serve on any criminal sentence, pursuant to Chapter 9 (§ 37.2-900 et seq.);

10. Determine by reviewing the Local Inmate Data System upon intake and again prior to release whether a blood, saliva, or tissue sample has been taken for DNA analysis for each person placed on probation or parole required to submit a sample pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 and, if no sample has been taken, require a person placed on probation or parole to submit a sample for DNA analysis; and

11. For every offender accepted pursuant to the Interstate Compact for the Supervision of Adult Offenders (§ 53.1-176.1 et seq.) who has been convicted of an offense that, if committed in Virginia, would be considered a felony, take a sample or verify that a sample has been taken and accepted into the data bank for DNA analysis in the Commonwealth.

Nothing in this article shall require probation and parole officers to investigate or supervise cases before general district or juvenile and domestic relations district courts.

§ 54.1-2715. Temporary permits for certain clinicians.

A. The Board may issue a temporary permit to a graduate of a dental school or college or the dental department of a college or university, who (i) has a D.D.S. or D.M.D. degree and is otherwise qualified, (ii) is not licensed to practice dentistry in Virginia, and (iii) has not failed an examination for a license to practice dentistry in the Commonwealth. Such temporary permits may be issued only to those eligible graduates who serve as clinicians in dental clinics operated by (a) the Virginia Department of Corrections, (b) the Virginia Department of Health, (c) the Virginia Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, or (d) a Virginia charitable corporation granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and operating as a clinic for the indigent and uninsured that is organized for the delivery of primary health care services: (i) as a federal qualified health center designated by the Centers for Medicare and Medicaid Services or (ii) at a reduced or sliding fee scale or without charge.

B. Applicants for temporary permits shall be certified to the executive director of the Board by the Director of the Department of Corrections, the Commissioner of Health, the Commissioner of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services, or the chief executive officer of a Virginia charitable corporation identified in subsection A. The holder of such a temporary permit shall not be entitled to receive any fee or other compensation other than salary. Such permits

7682 shall be valid for no more than two years and shall expire on the June 30 of the second year after their  
 7683 issuance, or shall terminate when the holder ceases to serve as a clinician with the certifying agency or  
 7684 charitable corporation. Such permits may be reissued annually or may be revoked at any time for cause.  
 7685 Reissuance or revocation of a temporary permit is in the discretion of the Board.

7686 C. Dentists licensed pursuant to this chapter may practice as employees of the dental clinics operated  
 7687 as specified in subsection A.

7688 § 54.1-2726. Temporary permits for certain hygienists.

7689 A. The Board may issue a temporary permit to a graduate of an accredited dental hygiene program  
 7690 who is otherwise qualified, has not held a license to practice dental hygiene in Virginia, and has not  
 7691 failed an examination for a license to practice dental hygiene in the Commonwealth. Such temporary  
 7692 permits shall be issued only to those eligible graduates who serve in the Department of Health or the  
 7693 Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services in  
 7694 a dental clinic operated by the Commonwealth or in a Virginia charitable corporation granted tax-exempt  
 7695 status under § 501 (c) (3) of the Internal Revenue Code and operated as a clinic for the indigent and  
 7696 uninsured that is organized for the delivery of primary health care services: (i) as a federally qualified  
 7697 health center designated by the Centers for Medicare & Medicaid Services (CMS) or (ii) at a reduced or  
 7698 sliding fee scale or without charge.

7699 B. Applicants for temporary permits shall be certified to the executive director of the Board by the  
 7700 Commissioner of Health or the Commissioner of Mental Health, ~~Mental Retardation~~ *Intellectual*  
 7701 *Disability* and Substance Abuse Services or the chief executive officer of a Virginia charitable  
 7702 corporation pursuant to subsection A. The holder of such permit shall not be entitled to receive any fee  
 7703 or compensation other than salary. Such permits shall be valid for no more than two years and shall  
 7704 expire on the June 30 of the second year after their issuance, or shall terminate when the holder ceases  
 7705 to be employed by the certifying agency. Such permits may be reissued annually or may be revoked at  
 7706 any time for cause. Reissuance or revocation of a temporary permit is in the discretion of the Board.

7707 The holder of a temporary permit shall function under the direction of a dentist.

7708 § 54.1-2970. Medical treatment for certain persons incapable of giving informed consent.

7709 When a delay in treatment might adversely affect recovery, a licensed health professional or licensed  
 7710 hospital shall not be subject to liability arising out of a claim based on lack of informed consent or be  
 7711 prohibited from providing surgical, medical or dental treatment to an individual who is a patient or  
 7712 resident of a hospital or facility operated by the Department of Mental Health, ~~Mental~~  
 7713 ~~Retardation~~ *Intellectual Disability* and Substance Abuse Services or to a consumer who is receiving case  
 7714 management services from a community services board or behavioral health authority and who is  
 7715 incapable of giving informed consent to the treatment by reason of mental illness or ~~mental~~  
 7716 ~~retardation~~ *intellectual disability* under the following conditions:

7717 1. No legally authorized guardian or committee was available to give consent;

7718 2. A reasonable effort is made to advise a parent or other next of kin of the need for the surgical,  
 7719 medical or dental treatment;

7720 3. No reasonable objection is raised by or on behalf of the alleged incapacitated person; and

7721 4. Two physicians, or in the case of dental treatment, two dentists or one dentist and one physician,  
 7722 state in writing that they have made a good faith effort to explain the necessary treatment to the  
 7723 individual, and they have probable cause to believe that the individual is incapacitated and unable to  
 7724 consent to the treatment by reason of mental illness or ~~mental retardation~~ *intellectual disability* and that  
 7725 delay in treatment might adversely affect recovery.

7726 The provisions of this section shall apply only to the treatment of physical injury or illness and not  
 7727 to any treatment for mental, emotional or psychological condition.

7728 Treatment pursuant to this section of an individual's mental, emotional or psychological condition  
 7729 when the individual is unable to make an informed decision and when no legally authorized guardian or  
 7730 committee is available to provide consent shall be governed by regulations promulgated by the State  
 7731 Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services Board under  
 7732 § 37.2-400.

7733 § 54.1-2982. Definitions.

7734 As used in this article:

7735 "Advance directive" means (i) a witnessed written document, voluntarily executed by the declarant in  
 7736 accordance with the requirements of § 54.1-2983 or (ii) a witnessed oral statement, made by the  
 7737 declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in  
 7738 accordance with the provisions of § 54.1-2983.

7739 "Agent" means an adult appointed by the declarant under an advance directive, executed or made in  
 7740 accordance with the provisions of § 54.1-2983, to make health care decisions for him, including  
 7741 visitation, provided the advance directive makes express provisions for visitation and subject to  
 7742 physician orders and policies of the institution to which the declarant is admitted. The declarant may  
 7743 also appoint an adult to make, after the declarant's death, an anatomical gift of all or any part of his

body pursuant to Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1.

"Attending physician" means the primary physician who has responsibility for the treatment and care of the patient.

"Declarant" means an adult who makes an advance directive, as defined in this article, while capable of making and communicating an informed decision.

"Durable Do Not Resuscitate Order" means a written physician's order issued pursuant to § 54.1-2987.1 to withhold cardiopulmonary resuscitation from a particular patient in the event of cardiac or respiratory arrest. For purposes of this article, cardiopulmonary resuscitation shall include cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, and defibrillation and related procedures. As the terms "advance directive" and "Durable Do Not Resuscitate Order" are used in this article, a Durable Do Not Resuscitate Order is not and shall not be construed as an advance directive.

"Incapable of making an informed decision" means the inability of an adult patient, because of mental illness, ~~mental retardation~~ *intellectual disability*, or any other mental or physical disorder which precludes communication or impairs judgment and which has been diagnosed and certified in writing by his attending physician and a second physician or licensed clinical psychologist after personal examination of such patient, to make an informed decision about providing, withholding or withdrawing a specific medical treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed medical decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise mentally competent and able to communicate by means other than speech, shall not be considered incapable of making an informed decision.

"Life-prolonging procedure" means any medical procedure, treatment or intervention which (i) utilizes mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, or is otherwise of such a nature as to afford a patient no reasonable expectation of recovery from a terminal condition and (ii) when applied to a patient in a terminal condition, would serve only to prolong the dying process. The term includes artificially administered hydration and nutrition. However, nothing in this act shall prohibit the administration of medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain, including the administration of pain relieving medications in excess of recommended dosages in accordance with §§ 54.1-2971.01 and 54.1-3408.1. For purposes of §§ 54.1-2988, 54.1-2989, and 54.1-2991, the term also shall include cardiopulmonary resuscitation.

"Persistent vegetative state" means a condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness, with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner, other than reflex activity of muscles and nerves for low level conditioned response, and from which, to a reasonable degree of medical probability, there can be no recovery.

"Physician" means a person licensed to practice medicine in the Commonwealth of Virginia or in the jurisdiction where the treatment is to be rendered or withheld.

"Qualified patient" means a patient who has made an advance directive in accordance with this article and either (i) has been diagnosed and certified in writing by the attending physician and a second physician or licensed clinical psychologist after personal examination to be incapable of making an informed decision about providing, withholding or withdrawing a specific medical treatment or course of treatment, in accordance with § 54.1-2986 or (ii) has been diagnosed and certified in writing by the attending physician to be afflicted with a terminal condition.

"Terminal condition" means a condition caused by injury, disease or illness from which, to a reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent or (ii) the patient is in a persistent vegetative state.

"Witness" means any person over the age of 18, including a spouse or blood relative of the declarant. Employees of health care facilities and physician's offices, who act in good faith, shall be permitted to serve as witnesses for purposes of this article.

§ 54.1-2986. Procedure in absence of an advance directive; procedure for advance directive without agent; no presumption; persons who may authorize treatment for patients incapable of informed decisions; applicability restricted to nonprotesting patients.

A. Whenever (i) the attending physician of an adult patient has determined after personal examination that such patient, because of mental illness, ~~mental retardation~~ *intellectual disability*, or any other mental disorder, or a physical disorder which precludes communication or impairs judgment, is incapable of making an informed decision about providing, withholding or withdrawing a specific medical treatment or course of treatment and such adult patient has not made an advance directive in accordance with this article or (ii) the attending physician of an adult patient has determined after personal examination that such patient, because of mental illness, ~~mental retardation~~ *intellectual disability*,

7805 or any other mental disorder, or a physical disorder which precludes communication or impairs  
7806 judgment, is incapable of making an informed decision about providing, withholding or withdrawing a  
7807 specific medical treatment or course of treatment and the adult patient has made an advance directive in  
7808 accordance with this article which does not indicate his wishes with respect to the specific course of  
7809 treatment at issue and does not appoint an agent to make health care decisions upon his becoming  
7810 incapable of making an informed decision, the attending physician may, upon compliance with the  
7811 provisions of this section, provide to, withhold or withdraw from such patient medical or surgical care  
7812 or treatment, including, but not limited to, life-prolonging procedures, upon the authorization of any of  
7813 the following persons, in the specified order of priority, if the physician is not aware of any available,  
7814 willing and competent person in a higher class:

- 7815 1. A guardian or committee for the patient. This subdivision shall not be construed to require such  
7816 appointment in order that a treatment decision can be made under this section; or  
7817 2. The patient's spouse except where a divorce action has been filed and the divorce is not final; or  
7818 3. An adult child of the patient; or  
7819 4. A parent of the patient; or  
7820 5. An adult brother or sister of the patient; or  
7821 6. Any other relative of the patient in the descending order of blood relationship.

7822 If two or more of the persons listed in the same class in subdivisions A 3 through A 6 with equal  
7823 decision-making priority inform the attending physician that they disagree as to a particular treatment  
7824 decision, the attending physician may rely on the authorization of a majority of the reasonably available  
7825 members of that class.

7826 Any person authorized to consent to the providing, withholding or withdrawing of treatment pursuant  
7827 to this article shall (i) prior to giving consent, make a good faith effort to ascertain the risks and  
7828 benefits of and alternatives to the treatment and the religious beliefs and basic values of the patient  
7829 receiving treatment, and to inform the patient, to the extent possible, of the proposed treatment and the  
7830 fact that someone else is authorized to make a decision regarding that treatment and (ii) base his  
7831 decision on the patient's religious beliefs and basic values and any preferences previously expressed by  
7832 the patient regarding such treatment to the extent they are known, and if unknown or unclear, on the  
7833 patient's best interests. Regardless of the absence of an advance directive, if the patient has expressed his  
7834 intent to be an organ donor in any written document, no person noted in this section shall revoke, or in  
7835 any way hinder, such organ donation.

7836 B. The absence of an advance directive by an adult patient shall not give rise to any presumption as  
7837 to his intent to consent to or refuse life-prolonging procedures.

7838 C. The provisions of this article shall not apply to authorization of nontherapeutic sterilization,  
7839 abortion, psychosurgery, or admission to a facility, as defined in § 37.2-100; however, the provisions of  
7840 this article, if otherwise applicable, may be employed to authorize a specific treatment or course of  
7841 treatment for a person who has been lawfully admitted to such a facility.

7842 Further, the provisions of this article shall not authorize providing, continuing, withholding or  
7843 withdrawing of treatment if the provider of the treatment knows that such an action is protested by the  
7844 patient. No person shall authorize treatment, or a course of treatment, pursuant to this article, that such  
7845 person knows, or upon reasonable inquiry ought to know, is contrary to the religious beliefs or basic  
7846 values of the patient unable to make a decision, whether expressed orally or in writing.

7847 D. Prior to withholding or withdrawing treatment for which authorization has been obtained or will  
7848 be sought pursuant to this article and prior to, or as soon as reasonably practicable thereafter, the  
7849 initiation of treatment for which authorization has been obtained or will be sought pursuant to this  
7850 article, and no less frequently than every 180 days while the treatment continues, the attending physician  
7851 shall obtain written certification that the patient is incapable of making an informed decision regarding  
7852 the treatment from a licensed physician or clinical psychologist which shall be based on a personal  
7853 examination of the patient. Whenever the authorization is being sought for treatment of a mental illness,  
7854 the second physician or licensed clinical psychologist shall not be otherwise currently involved in the  
7855 treatment of the person assessed. The cost of the assessment shall be considered for all purposes a cost  
7856 of the patient's treatment.

7857 E. On petition of any person to the circuit court of the county or city in which any patient resides or  
7858 is located for whom treatment will be or is currently being provided, withheld or withdrawn pursuant to  
7859 this article, the court may enjoin such action upon finding by a preponderance of the evidence that the  
7860 action is not lawfully authorized by this article or by other state or federal law.

7861 § 54.1-2987.1. Durable Do Not Resuscitate Orders.

7862 A. A Durable Do Not Resuscitate Order may be issued by a physician for his patient with whom he  
7863 has a bona fide physician/patient relationship as defined in the guidelines of the Board of Medicine, and  
7864 only with the consent of the patient or, if the patient is a minor or is otherwise incapable of making an  
7865 informed decision regarding consent for such an order, upon the request of and with the consent of the  
7866 person authorized to consent on the patient's behalf.



B. This section shall not authorize any health care provider or practitioner to follow a Durable Do Not Resuscitate Order for any patient who is able to, and does, express to such health care provider or practitioner the desire to be resuscitated in the event of cardiac or respiratory arrest.

If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall so revoke the provider's or practitioner's authority to follow a Durable Do Not Resuscitate Order.

The expression of such desire to be resuscitated prior to cardiac or respiratory arrest shall constitute revocation of the Order; however, a new Order may be issued upon consent of the patient or the person authorized to consent on the patient's behalf.

C. Durable Do Not Resuscitate Orders issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this section and regulations promulgated by the Board of Health, (i) qualified emergency medical services personnel as defined in § 32.1-111.1 and (ii) licensed health care practitioners in any facility, program or organization operated or licensed by the Board of Health or by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services or operated, licensed or owned by another state agency are authorized to follow Durable Do Not Resuscitate Orders that are available to them in a form approved by the Board of Health.

D. The provisions of this section shall not authorize any qualified emergency medical services personnel or licensed health care provider or practitioner who is attending the patient at the time of cardiac or respiratory arrest to provide, continue, withhold or withdraw treatment if such provider or practitioner knows that taking such action is protested by the patient incapable of making an informed decision. No person shall authorize providing, continuing, withholding or withdrawing treatment pursuant to this section that such person knows, or upon reasonable inquiry ought to know, is contrary to the religious beliefs or basic values of a patient incapable of making an informed decision or the wishes of such patient fairly expressed when the patient was capable of making an informed decision. Further, this section shall not authorize the withholding of other medical interventions, such as intravenous fluids, oxygen or other therapies deemed necessary to provide comfort care or to alleviate pain.

E. For the purposes of this section:

"Health care provider" includes, but is not limited to, qualified emergency medical services personnel.

"Person authorized to consent on the patient's behalf" means any person authorized by law to consent on behalf of the patient incapable of making an informed decision or, in the case of a minor child, the parent or parents having custody of the child or the child's legal guardian or as otherwise provided by law.

F. This section shall not prevent, prohibit or limit a physician from issuing a written order, other than a Durable Do Not Resuscitate Order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practice.

G. Valid Do Not Resuscitate Orders or Emergency Medical Services Do Not Resuscitate Orders issued before July 1, 1999, pursuant to the then-current law, shall remain valid and shall be given effect as provided in this article.

§ 54.1-3408. Professional use by practitioners.

A. A practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine or a licensed nurse practitioner pursuant to § 54.1-2957.01, a licensed physician assistant pursuant to § 54.1-2952.1, or a TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of this title shall only prescribe, dispense, or administer controlled substances in good faith for medicinal or therapeutic purposes within the course of his professional practice.

B. The prescribing practitioner's order may be on a written prescription or pursuant to an oral prescription as authorized by this chapter. The prescriber may administer drugs and devices, or he may cause them to be administered by a nurse, physician assistant or intern under his direction and supervision, or he may prescribe and cause drugs and devices to be administered to patients in state-owned or state-operated hospitals or facilities licensed as hospitals by the Board of Health or psychiatric hospitals licensed by the State Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services Board by other persons who have been trained properly to administer drugs and who administer drugs only under the control and supervision of the prescriber or a pharmacist or a prescriber may cause drugs and devices to be administered to patients by emergency medical services personnel who have been certified and authorized to administer such drugs and devices pursuant to Board of Health regulations governing emergency medical services and who are acting within the scope of such certification. A prescriber may authorize a licensed respiratory care practitioner as defined in § 54.1-2954 to administer by inhalation controlled substances used in inhalation or respiratory therapy.

C. Pursuant to an oral or written order or standing protocol, the prescriber, who is authorized by state or federal law to possess and administer radiopharmaceuticals in the scope of his practice, may

7928 authorize a nuclear medicine technologist to administer, under his supervision, radiopharmaceuticals used  
7929 in the diagnosis or treatment of disease.

7930 D. Pursuant to an oral or written order or standing protocol issued by the prescriber within the  
7931 course of his professional practice, such prescriber may authorize registered nurses and licensed practical  
7932 nurses to possess (i) epinephrine for administration in treatment of emergency medical conditions and  
7933 (ii) heparin and sterile normal saline to use for the maintenance of intravenous access lines.

7934 Pursuant to the regulations of the Board of Health, certain emergency medical services technicians  
7935 may possess and administer epinephrine in emergency cases of anaphylactic shock.

7936 E. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course  
7937 of his professional practice, such prescriber may authorize licensed physical therapists to possess and  
7938 administer topical corticosteroids, topical lidocaine, and any other Schedule VI topical drug.

7939 F. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course  
7940 of his professional practice, such prescriber may authorize licensed athletic trainers to possess and  
7941 administer topical corticosteroids, topical lidocaine, or other Schedule VI topical drugs, or to possess and  
7942 administer epinephrine for use in emergency cases of anaphylactic shock.

7943 G. Pursuant to an oral or written order or standing protocol issued by the prescriber within the  
7944 course of his professional practice, and in accordance with policies and guidelines established by the  
7945 Department of Health pursuant to § 32.1-50.2, such prescriber may authorize registered nurses or  
7946 licensed practical nurses under the immediate and direct supervision of a registered nurse to possess and  
7947 administer tuberculin purified protein derivative (PPD) in the absence of a prescriber. The Department of  
7948 Health's policies and guidelines shall be consistent with applicable guidelines developed by the Centers  
7949 for Disease Control and Prevention for preventing transmission of mycobacterium tuberculosis and shall  
7950 be updated to incorporate any subsequently implemented standards of the Occupational Safety and  
7951 Health Administration and the Department of Labor and Industry to the extent that they are inconsistent  
7952 with the Department of Health's policies and guidelines. Such standing protocols shall explicitly describe  
7953 the categories of persons to whom the tuberculin test is to be administered and shall provide for  
7954 appropriate medical evaluation of those in whom the test is positive. The prescriber shall ensure that the  
7955 nurse implementing such standing protocols has received adequate training in the practice and principles  
7956 underlying tuberculin screening.

7957 The Health Commissioner or his designee may authorize registered nurses, acting as agents of the  
7958 Department of Health, to possess and administer, at the nurse's discretion, tuberculin purified protein  
7959 derivative (PPD) to those persons in whom tuberculin skin testing is indicated based on protocols and  
7960 policies established by the Department of Health.

7961 H. Pursuant to a written order or standing protocol issued by the prescriber within the course of his  
7962 professional practice, such prescriber may authorize, with the consent of the parents as defined in  
7963 § 22.1-1, an employee of a school board who is trained in the administration of insulin and glucagon to  
7964 assist with the administration of insulin or administer glucagon to a student diagnosed as having diabetes  
7965 and who requires insulin injections during the school day or for whom glucagon has been prescribed for  
7966 the emergency treatment of hypoglycemia. Such authorization shall only be effective when a licensed  
7967 nurse, nurse practitioner, physician or physician assistant is not present to perform the administration of  
7968 the medication.

7969 I. A prescriber may authorize, pursuant to a protocol approved by the Board of Nursing, the  
7970 administration of vaccines to adults for immunization, when a practitioner with prescriptive authority is  
7971 not physically present, (i) by licensed pharmacists, (ii) by registered nurses, or (iii) licensed practical  
7972 nurses under the immediate and direct supervision of a registered nurse. A prescriber acting on behalf of  
7973 and in accordance with established protocols of the Department of Health may authorize the  
7974 administration of vaccines to any person by a pharmacist or nurse when the prescriber is not physically  
7975 present.

7976 J. A dentist may cause Schedule VI topical drugs to be administered under his direction and  
7977 supervision by either a dental hygienist or by an authorized agent of the dentist.

7978 Further, pursuant to a written order and in accordance with a standing protocol issued by the dentist  
7979 in the course of his professional practice, a dentist may authorize a dental hygienist under his general  
7980 supervision, as defined in § 54.1-2722, to possess and administer topical oral fluorides, topical oral  
7981 anesthetics, topical and directly applied antimicrobial agents for treatment of periodontal pocket lesions,  
7982 as well as any other Schedule VI topical drug approved by the Board of Dentistry.

7983 In addition, a dentist may authorize a dental hygienist under his direction to administer Schedule VI  
7984 nitrous oxide and oxygen inhalation analgesia and, to persons 18 years of age or older, Schedule VI  
7985 local anesthesia.

7986 K. (Contingent expiration date - See Editor's note) This section shall not prevent the administration  
7987 of drugs by a person who has satisfactorily completed a training program for this purpose approved by  
7988 the Board of Nursing and who administers such drugs in accordance with a physician's instructions  
7989 pertaining to dosage, frequency, and manner of administration, and in accordance with regulations

promulgated by the Board of Pharmacy relating to security and record keeping, when the drugs administered would be normally self-administered by (i) a resident of a facility licensed or certified by the State Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services Board; (ii) a resident of any assisted living facility which is licensed by the Department of Social Services; (iii) a resident of the Virginia Rehabilitation Center for the Blind and Vision Impaired; (iv) a resident of a facility approved by the Board or Department of Juvenile Justice for the placement of children in need of services or delinquent or alleged delinquent youth; (v) a program participant of an adult day-care center licensed by the Department of Social Services; or (vi) a resident of any facility authorized or operated by a state or local government whose primary purpose is not to provide health care services.

K. (Contingent effective date - see Editor's note) This section shall not prevent the administration of drugs by a person who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and who administers such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of administration, and in accordance with regulations promulgated by the Board of Pharmacy relating to security and record keeping, when the drugs administered would be normally self-administered by (i) a resident of a facility licensed or certified by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services; (ii) a resident of the Virginia Rehabilitation Center for the Blind and Vision Impaired; (iii) a resident of a facility approved by the Board or Department of Juvenile Justice for the placement of children in need of services or delinquent or alleged delinquent youth; (iv) a program participant of an adult day-care center licensed by the Department of Social Services; or (v) a resident of any facility authorized or operated by a state or local government whose primary purpose is not to provide health care services.

L. (Contingent effective date - see Editor's note) Medication aides registered by the Board of Nursing pursuant to Article 7 (§ 54.1-3041 et seq.) of Chapter 30 may administer drugs that would otherwise be self-administered to residents of any assisted living facility licensed by the Department of Social Services. A registered medication aide shall administer drugs pursuant to this section in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration; in accordance with regulations promulgated by the Board of Pharmacy relating to security and recordkeeping; in accordance with the assisted living facility's Medication Management Plan; and in accordance with such other regulations governing their practice promulgated by the Board of Nursing.

M. In addition, this section shall not prevent the administration of drugs by a person who administers such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of administration and with written authorization of a parent, and in accordance with school board regulations relating to training, security and record keeping, when the drugs administered would be normally self-administered by a student of a Virginia public school. Training for such persons shall be accomplished through a program approved by the local school boards, in consultation with the local departments of health.

N. In addition, this section shall not prevent the administration of drugs by a person to a child in a child day program as defined in § 63.2-100 and regulated by the State Board of Social Services or the Child Day Care Council, provided such person (i) has satisfactorily completed a training program for this purpose approved by the Board of Nursing and taught by a registered nurse, licensed practical nurse, doctor of medicine or osteopathic medicine, or pharmacist; (ii) has obtained written authorization from a parent or guardian; (iii) administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration; and (iv) administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container that would normally be administered by a parent or guardian to the child.

O. In addition, this section shall not prevent the administration or dispensing of drugs and devices by persons if they are authorized by the State Health Commissioner in accordance with protocols established by the State Health Commissioner pursuant to § 32.1-42.1 when (i) the Governor has declared a disaster or a state of emergency or the United States Secretary of Health and Human Services has issued a declaration of an actual or potential bioterrorism incident or other actual or potential public health emergency; (ii) it is necessary to permit the provision of needed drugs or devices; and (iii) such persons have received the training necessary to safely administer or dispense the needed drugs or devices. Such persons shall administer or dispense all drugs or devices under the direction, control and supervision of the State Health Commissioner.

P. Nothing in this title shall prohibit the administration of normally self-administered oral or topical drugs by unlicensed individuals to a person in his private residence.

Q. This section shall not interfere with any prescriber issuing prescriptions in compliance with his authority and scope of practice and the provisions of this section to a Board agent for use pursuant to subsection G of § 18.2-258.1. Such prescriptions issued by such prescriber shall be deemed to be valid

8051 prescriptions.

8052 R. Nothing in this title shall prevent or interfere with dialysis care technicians or dialysis patient care  
8053 technicians who are certified by an organization approved by the Board of Health Professions or persons  
8054 authorized for provisional practice pursuant to Chapter 27.01 (§ 54.1-2729.1 et seq.) of this title, in the  
8055 ordinary course of their duties in a Medicare-certified renal dialysis facility, from administering heparin,  
8056 topical needle site anesthetics, dialysis solutions, sterile normal saline solution, and blood volumizers, for  
8057 the purpose of facilitating renal dialysis treatment, when such administration of medications occurs under  
8058 the orders of a licensed physician, nurse practitioner or physician assistant and under the immediate and  
8059 direct supervision of a licensed registered nurse. Nothing in this chapter shall be construed to prohibit a  
8060 patient care dialysis technician trainee from performing dialysis care as part of and within the scope of  
8061 the clinical skills instruction segment of a supervised dialysis technician training program, provided such  
8062 trainee is identified as a "trainee" while working in a renal dialysis facility.

8063 The dialysis care technician or dialysis patient care technician administering the medications shall  
8064 have demonstrated competency as evidenced by holding current valid certification from an organization  
8065 approved by the Board of Health Professions pursuant to Chapter 27.01 (§ 54.1-2729.1 et seq.) of this  
8066 title.

8067 S. Persons who are otherwise authorized to administer controlled substances in hospitals shall be  
8068 authorized to administer influenza or pneumococcal vaccines pursuant to § 32.1-126.4.

8069 T. Pursuant to a specific order for a patient and under his direct and immediate supervision, a  
8070 prescriber may authorize the administration of controlled substances by personnel who have been  
8071 properly trained to assist a doctor of medicine or osteopathic medicine, provided the method does not  
8072 include intravenous, intrathecal, or epidural administration and the prescriber remains responsible for  
8073 such administration.

8074 U. A nurse or a dental hygienist may possess and administer topical fluoride varnish to the teeth of  
8075 children aged six months to three years pursuant to an oral or written order or a standing protocol issued  
8076 by a doctor of medicine or osteopathic medicine that conforms to standards adopted by the Virginia  
8077 Department of Health.

8078 § 54.1-3408.01. Requirements for prescriptions.

8079 A. The written prescription referred to in § 54.1-3408 shall be written with ink or individually typed  
8080 or printed. The prescription shall contain the name, address, and telephone number of the prescriber. A  
8081 prescription for a controlled substance other than one controlled in Schedule VI shall also contain the  
8082 federal controlled substances registration number assigned to the prescriber. The prescriber's information  
8083 shall be either preprinted upon the prescription blank, electronically printed, typewritten, rubber stamped,  
8084 or printed by hand.

8085 The written prescription shall contain the first and last name of the patient for whom the drug is  
8086 prescribed. The address of the patient shall either be placed upon the written prescription by the  
8087 prescriber or his agent, or by the dispenser of the prescription. If not otherwise prohibited by law, the  
8088 dispenser may record the address of the patient in an electronic prescription dispensing record for that  
8089 patient in lieu of recording it on the prescription. Each written prescription shall be dated as of, and  
8090 signed by the prescriber on, the day when issued. The prescription may be prepared by an agent for the  
8091 prescriber's signature.

8092 This section shall not prohibit a prescriber from using preprinted prescriptions for drugs classified in  
8093 Schedule VI if all requirements concerning dates, signatures, and other information specified above are  
8094 otherwise fulfilled.

8095 No written prescription order form shall include more than one prescription. However, this provision  
8096 shall not apply (i) to prescriptions written as chart orders for patients in hospitals and long-term-care  
8097 facilities, patients receiving home infusion services or hospice patients, or (ii) to a prescription ordered  
8098 through a pharmacy operated by or for the Department of Corrections or the Department of Juvenile  
8099 Justice, the central pharmacy of the Department of Health, or the central outpatient pharmacy operated  
8100 by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse  
8101 Services; or (iii) to prescriptions written for patients residing in adult and juvenile detention centers,  
8102 local or regional jails, or work release centers operated by the Department of Corrections.

8103 B. Prescribers' orders, whether written as chart orders or prescriptions, for Schedules II, III, IV and V  
8104 controlled drugs to be administered to (i) patients or residents of long-term care facilities served by a  
8105 Virginia pharmacy from a remote location or (ii) patients receiving parenteral, intravenous,  
8106 intramuscular, subcutaneous or intraspinal infusion therapy and served by a home infusion pharmacy  
8107 from a remote location, may be transmitted to that remote pharmacy by an electronic communications  
8108 device over telephone lines which send the exact image to the receiver in hard copy form, and such  
8109 facsimile copy shall be treated as a valid original prescription order. If the order is for a  
8110 radiopharmaceutical, a physician authorized by state or federal law to possess and administer medical  
8111 radioactive materials may authorize a nuclear medicine technologist to transmit a prescriber's verbal or  
8112 written orders for radiopharmaceuticals.

C. The oral prescription referred to in § 54.1-3408 shall be transmitted to the pharmacy of the patient's choice by the prescriber or his authorized agent. For the purposes of this section, an authorized agent of the prescriber shall be an employee of the prescriber who is under his immediate and personal supervision, or if not an employee, an individual who holds a valid license allowing the administration or dispensing of drugs and who is specifically directed by the prescriber.

§ 54.1-3437.1. Limited permit for repackaging drugs.

The Board may issue a limited manufacturing permit for the purpose of repackaging drugs, upon such terms and conditions approved by the Board, to the pharmacy directly operated by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services and which serves clients of the community services boards.

§ 54.1-3506. License required.

In order to engage in the practice of counseling or marriage and family therapy or in the independent practice of substance abuse treatment, as defined in this chapter, it shall be necessary to hold a license; however, no license shall be required for the practice of marriage and family therapy or the independent practice of substance abuse treatment until six months after the effective date of regulations governing marriage and family therapy and substance abuse treatment, respectively, promulgated by the Board under subdivisions 6 and 7 of § 54.1-3505. The Board may issue a license, without examination, for the practice of marriage and family therapy or the independent practice of substance abuse treatment to persons who hold a current and unrestricted license as a professional counselor within the Commonwealth and who meet the clinical and academic requirements for licensure as a marriage and family therapist or licensed substance abuse treatment practitioner, respectively. The applicant for such license shall present satisfactory evidence of qualifications equal to those required of applicants for licensure as marriage and family therapists or licensed substance abuse treatment practitioners, respectively, by examination in the Commonwealth.

Any person who renders substance abuse treatment services as defined in this chapter and who is not licensed to do so, other than a person who is exempt pursuant to § 54.1-3501, shall render such services only when he is (i) under the supervision and direction of a person licensed under this chapter who shall be responsible for the services performed by such unlicensed person, or (ii) in compliance with the regulations governing an organization or a facility licensed by the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services.

§ 56-484.19. Definitions.

As used in this article:

"Alternative method of providing call location information" means a method of maintaining and operating a multiline telephone system that ensures that:

1. Emergency calls from a telephone station provide the PSAP with sufficient location identification information to ensure that emergency responders are dispatched to a location at the facility from which the emergency call was placed, from which location emergency responders will be able to ascertain the telephone station where the emergency call was placed (i) by being able to view all of the telephone stations at the facility or (ii) by the activation of an alerting device, including but not limited to lights or an alarm, located near the telephone station, which activation is triggered by the placing of the emergency call;

2. Emergency calls from a telephone station, in addition to reaching a PSAP, connect to or otherwise notify a switchboard operator, attendant, or other designated on-site individual who is capable of giving the PSAP the location of the telephone station from which the emergency call was placed; or

3. Calls to the digits "9-1-1" from a telephone station connect to a private emergency answering point.

An alternative method of providing call location information shall also be deemed to be provided, as a result of the imputed ability of emergency responders to readily locate all telephone stations at the facility, when emergency calls are placed from a facility with a contiguous area of fewer than 7,000 square feet, located on one or more floors.

"Automatic location identification" or "ALI" means the automatic display at a PSAP of information defining the emergency call location, which information shall identify the floor name or number, room name or number, building name or number, cubicle name or number, and office name or number, as applicable, or imparts other information that is sufficiently specific to provide the emergency responders with the ability to locate the telephone station from which the emergency call was placed.

"Automatic number identification" or "ANI" means the automatic display at a PSAP of a telephone number that a PSAP may use to call the telephone station from which the emergency call was placed.

"Central office system" means a business telephone service offered by a provider of communications services that provides features similar to a private branch exchange by transmitting data over telecommunications equipment or cable lines.

"Emergency call" means a telephone call that enables the user to reach a PSAP by dialing the digits

8174 "9-1-1" and, if applicable, any additional digit or digits that must be dialed in order to permit the user to  
8175 access the public switched telephone network.

8176 "Emergency call location" means the location of the telephone station on an MLTS from which an  
8177 emergency call is placed and to which a PSAP may dispatch emergency responders based upon ALI  
8178 provided via the emergency call.

8179 "Emergency responders" means fire services, law enforcement, emergency medical services, and other  
8180 public services or agencies that may be dispatched by a PSAP in response to an emergency call.

8181 "Enhanced 9-1-1 service" means a service consisting of telephone network features and PSAPs that  
8182 (i) enables users of telephone systems to reach a PSAP by making an emergency call; (ii) automatically  
8183 directs emergency calls to the appropriate PSAPs by selective routing based on the geographical location  
8184 from which the emergency call originated; and (iii) provides the capability for ANI and ALI features.

8185 "Facility" means real estate and improvements used principally for or as a (i) hotel as defined in  
8186 § 35.1-1, (ii) college or university dormitory, (iii) medical care facility as defined in § 32.1-102.1, (iv)  
8187 group home or other residential facility licensed by the Department of Mental Health, ~~Mental~~  
8188 ~~Retardation~~ *Intellectual Disability* n and Substance Abuse Services or Department of Social Services, (v)  
8189 assisted living facility as defined in § 63.2-100, (vi) apartment complex or condominium where shared  
8190 tenant telephone service is provided, (vii) commercial or government office building, (viii)  
8191 manufacturing, processing, assembly, warehouse, or distribution establishment, or (ix) retail  
8192 establishment.

8193 "MLTS provider" means a person who operates a facility at which telephone service is provided,  
8194 with or without compensation, through a multiline telephone system.

8195 "Multiline telephone system" or "MLTS" means a telephone system, including network-based or  
8196 premises-based systems, whether owned or leased by a public or private entity, operated in the  
8197 Commonwealth, that serves a facility, has more than one telephone station, and is comprised of common  
8198 control units, telephones, and control hardware and software that share a common interface to the public  
8199 switched telephone network, whether by a private branch exchange or central office system, without  
8200 regard to whether the system utilizes VoIP technology.

8201 "Person" includes any individual, corporation, partnership, association, cooperative, limited liability  
8202 company, trust, joint venture, government, political subdivision, or any other legal or commercial entity  
8203 and any successor, representative, agent, agency, or instrumentality thereof.

8204 "Private emergency answering point" means an answering point that is equipped and staffed during  
8205 all hours that the facility is occupied to provide adequate means of responding to calls to the digits  
8206 "9-1-1" from telephones on a multiline telephone system by reporting incidents to a PSAP in a manner  
8207 that identifies the emergency response location from which the call to the answering point was placed.

8208 "Public safety answering point" or "PSAP" means a communications operation operated by or on  
8209 behalf of a governmental entity that is equipped and staffed on a 24-hour basis to receive and process  
8210 telephone calls for emergency assistance from an individual by dialing, in addition to any digits required  
8211 to obtain an outside line, the digits "9-1-1."

8212 "Public switched telephone network" means the worldwide, interconnected networks of equipment,  
8213 lines, and controls assembled to establish circuit-switched voice communication paths between calling  
8214 and called parties.

8215 "Retail establishment" means any establishment selling goods or services to the ultimate user or  
8216 consumer of those goods or services, not for the purpose of resale, but for that user's or consumer's  
8217 personal rather than business use.

8218 "Telephone call" means the use of a telephone to initiate an ordinary voice transmission placed  
8219 through the public switched telephone network.

8220 "Telephone station" means a telephone on a multiline telephone system, from which a call may be  
8221 placed to a PSAP by dialing, in addition to any digits required to access the public switched telephone  
8222 network, the digits "9-1-1." However, in any medical care facility or licensed assisted living facility,  
8223 "telephone station" includes any telephone on a multiline telephone system located in an administrative  
8224 office, nursing station, lobby, waiting area, or other area accessible to the general public but does not  
8225 include a telephone located in the room of a patient or resident.

8226 "VoIP service" has the same meaning ascribed to it in § 56-484.12.

8227 § 57-2.02. Religious freedom preserved; definitions; applicability; construction; remedies.

8228 A. As used in this section:

8229 "Demonstrates" means meets the burdens of going forward with the evidence and of persuasion under  
8230 the standard of clear and convincing evidence.

8231 "Exercise of religion" means the exercise of religion under Article I, Section 16 of the Constitution  
8232 of Virginia, the Virginia Act for Religious Freedom (§ 57-1 et seq.), and the First Amendment to the  
8233 United States Constitution.

8234 "Government entity" means any branch, department, agency, or instrumentality of state government,  
8235 or any official or other person acting under color of state law, or any political subdivision of the

Commonwealth and does not include the Department of Corrections, the Department of Juvenile Justice, and facility of the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services that treats civilly committed sexually violent predators, or any local, regional or federal correctional facility.

"Prevails" means to obtain "prevailing party" status as defined by courts construing the federal Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988.

"Substantially burden" means to inhibit or curtail religiously motivated practice.

B. No government entity shall substantially burden a person's free exercise of religion even if the burden results from a rule of general applicability unless it demonstrates that application of the burden to the person is (i) essential to further a compelling governmental interest and (ii) the least restrictive means of furthering that compelling governmental interest.

C. Nothing in this section shall be construed to (i) authorize any government entity to burden any religious belief or (ii) affect, interpret or in any way address those portions of Article 1, Section 16 of the Constitution of Virginia, the Virginia Act for Religious Freedom (§ 57-1 et seq.), and the First Amendment to the United States Constitution that prohibit laws respecting the establishment of religion. Granting government funds, benefits or exemptions, to the extent permissible under clause (ii) of this subsection, shall not constitute a violation of this section. As used in this subsection, "granting" used with respect to government funding, benefits, or exemptions shall not include the denial of government funding, benefits, or exemptions.

D. A person whose religious exercise has been burdened by government in violation of this section may assert that violation as a claim or defense in any judicial or administrative proceeding and may obtain declaratory and injunctive relief from a circuit court, but shall not obtain monetary damages. A person who prevails in any proceeding to enforce this section against a government entity may recover his reasonable costs and attorney fees. The provisions of this subsection relating to attorney fees shall not apply to criminal prosecutions.

E. Nothing in this section shall prevent any governmental institution or facility from maintaining health, safety, security or discipline.

F. The decision of the circuit court to grant or deny declaratory and injunctive relief may be appealed by petition to the Court of Appeals of Virginia.

§ 57-60. Exemptions.

A. The following persons shall be exempt from the registration requirements of § 57-49, but shall otherwise be subject to the provisions of this chapter:

1. Educational institutions that are accredited by the Board of Education, by a regional accrediting association or by an organization affiliated with the National Commission on Accrediting, the Association Montessori Internationale, the American Montessori Society, the Virginia Independent Schools Association, or the Virginia Association of Independent Schools, any foundation having an established identity with any of the aforementioned educational institutions, and any other educational institution confining its solicitation of contributions to its student body, alumni, faculty and trustees, and their families.

2. Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation when all of the contributions collected without any deductions whatsoever are turned over to the named beneficiary for his use.

3. Charitable organizations that do not intend to solicit and receive, during a calendar year, and have not actually raised or received, during any of the three next preceding calendar years, contributions from the public in excess of \$5,000, if all of their functions, including fund-raising activities, are carried on by persons who are unpaid for their services and if no part of their assets or income inures to the benefit of or is paid to any officer or member. Nevertheless, if the contributions raised from the public, whether all of such are or are not received by any charitable organization during any calendar year, shall be in excess of \$5,000, it shall, within 30 days after the date it has received total contributions in excess of \$5,000, register with and report to the Commissioner as required by this chapter.

4. Organizations that solicit only within the membership of the organization by the members thereof.

5. Organizations that have no office within the Commonwealth, that solicit in the Commonwealth from without the Commonwealth solely by means of telephone or telegraph, direct mail or advertising in national media, and that have a chapter, branch, or affiliate within the Commonwealth that has registered with the Commissioner.

6. Organizations that have been granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and that are organized wholly as Area Health Education Centers in accordance with § 32.1-122.7.

7. Health care institutions defined herein as any facilities that have been granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code, and that are (i) licensed by the Department of Health or the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services; (ii) designated by the Health Care Financing Administration (HCFA) as federally qualified

8297 health centers; (iii) certified by the HCFA as rural health clinics; or (iv) wholly organized for the  
8298 delivery of health care services without charge; and any supporting organization that exists solely to  
8299 support any such health care institutions. For the purposes of clause (iv), "delivery of health care  
8300 services without charge" includes the delivery of dental, medical or other health services where a  
8301 reasonable minimum fee is charged to cover administrative costs.

8302 8. Civic organizations as defined herein.

8303 9. Nonprofit debt counseling agencies licensed pursuant to Chapter 10.2 (§ 6.1-363.2 et seq.) of Title  
8304 6.1.

8305 10. Agencies designated by the Virginia Department for the Aging pursuant to subdivision A 6 of  
8306 § 2.2-703 as area agencies on aging.

8307 11. Labor unions, labor associations and labor organizations that have been granted tax-exempt status  
8308 under § 501 (c) (5) of the Internal Revenue Code.

8309 12. Trade associations that have been granted tax-exempt status under § 501 (c) (6) of the Internal  
8310 Revenue Code.

8311 13. Organizations that have been granted tax-exempt status under § 501 (c) (3) of the Internal  
8312 Revenue Code and that are organized wholly as regional emergency medical services councils in  
8313 accordance with § 32.1-111.11.

8314 14. Nonprofit organizations that have been granted tax-exempt status under § 501 (c) (3) of the  
8315 Internal Revenue Code and that solicit contributions only through (i) grant proposals submitted to  
8316 for-profit corporations, (ii) grant proposals submitted to other nonprofit organizations that have been  
8317 granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code, or (iii) grant proposals  
8318 submitted to organizations determined to be private foundations under § 509 (a) of the Internal Revenue  
8319 Code.

8320 B. A charitable organization shall be subject to the provisions of §§ 57-57 and 57-59, but shall  
8321 otherwise be exempt from the provisions of this chapter for any year in which it confines its  
8322 solicitations in the Commonwealth to five or fewer contiguous cities and counties, and in which it has  
8323 registered under the charitable solicitations ordinance, if any, of each such city and county. No  
8324 organization shall be exempt under this subsection if, during its next preceding fiscal year, more than 10  
8325 percent of its gross receipts were paid to any person or combination of persons, located outside the  
8326 boundaries of such cities and counties, other than for the purchase of real property, or tangible personal  
8327 property or personal services to be used within such localities. An organization that is otherwise  
8328 qualified for exemption under this subsection that solicits by means of a local publication, or radio or  
8329 television station, shall not be disqualified solely because the circulation or range of such medium  
8330 extends beyond the boundaries of such cities or counties.

8331 C. No charitable or civic organization shall be exempt under this section unless it submits to the  
8332 Commissioner, who in his discretion may extend such filing deadline prospectively or retrospectively for  
8333 good cause shown, on forms to be prescribed by him, the name, address and purpose of the organization  
8334 and a statement setting forth the reason for the claim for exemption. Parent organizations may file  
8335 consolidated applications for exemptions for any chapters, branches, or affiliates that they believe to be  
8336 exempt from the registration provisions of this chapter. If the organization is exempted, the  
8337 Commissioner shall issue a letter of exemption, which may be exhibited to the public. A registration fee  
8338 of \$10 shall be required of every organization requesting an exemption after June 30, 1984. The letter of  
8339 exemption shall remain in effect as long as the organization continues to solicit in accordance with its  
8340 claim for exemption.

8341 D. Nothing in this chapter shall be construed as being applicable to the American Red Cross or any  
8342 of its local chapters.

8343 § 63.2-100. Definitions.

8344 As used in this title, unless the context requires a different meaning:

8345 "Abused or neglected child" means any child less than 18 years of age:

8346 1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or  
8347 inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than  
8348 accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental  
8349 functions, including but not limited to, a child who is with his parent or other person responsible for his  
8350 care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled  
8351 substance, or (ii) during the unlawful sale of such substance by that child's parents or other person  
8352 responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would  
8353 constitute a felony violation of § 18.2-248;

8354 2. Whose parents or other person responsible for his care neglects or refuses to provide care  
8355 necessary for his health. However, no child who in good faith is under treatment solely by spiritual  
8356 means through prayer in accordance with the tenets and practices of a recognized church or religious  
8357 denomination shall for that reason alone be considered to be an abused or neglected child. Further, a  
8358 decision by parents who have legal authority for the child or, in the absence of parents with legal



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

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

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

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

6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55-79.2, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902.

If a civil proceeding under this title is based solely on the parent having left the child at a hospital or rescue squad, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

"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~~ *Intellectual Disability* 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~~ *Intellectual Disability* 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 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214, when such facility is

8420 licensed by the Department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of  
8421 this title, but including any portion of the facility not so licensed; and (iv) any housing project for  
8422 persons 62 years of age or older or the disabled that provides no more than basic coordination of care  
8423 services and is funded by the U.S. Department of Housing and Urban Development, by the U.S.  
8424 Department of Agriculture, or by the Virginia Housing Development Authority. Included in this  
8425 definition are any two or more places, establishments or institutions owned or operated by a single  
8426 entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled  
8427 adults. Maintenance or care means the protection, general supervision and oversight of the physical and  
8428 mental well-being of an aged, infirm or disabled individual.

8429 "Auxiliary grants" means cash payments made to certain aged, blind or disabled individuals who  
8430 receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive  
8431 these benefits except for excess income.

8432 "Birth family" or "birth sibling" means the child's biological family or biological sibling.

8433 "Birth parent" means the child's biological parent and, for purposes of adoptive placement, means  
8434 parent(s) by previous adoption.

8435 "Board" means the State Board of Social Services.

8436 "Child" means any natural person under 18 years of age.

8437 "Child day center" means a child day program offered to (i) two or more children under the age of  
8438 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or  
8439 more children at any location.

8440 "Child day program" means a regularly operating service arrangement for children where, during the  
8441 absence of a parent or guardian, a person or organization has agreed to assume responsibility for the  
8442 supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

8443 "Child-placing agency" means any person who places children in foster homes, adoptive homes or  
8444 independent living arrangements pursuant to § 63.2-1819 or a local board that places children in foster  
8445 homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903 and 63.2-1221. Officers, employees, or  
8446 agents of the Commonwealth, or any locality acting within the scope of their authority as such, who  
8447 serve as or maintain a child-placing agency, shall not be required to be licensed.

8448 "Child-protective services" means the identification, receipt and immediate response to complaints  
8449 and reports of alleged child abuse or neglect for children under 18 years of age. It also includes  
8450 assessment, and arranging for and providing necessary protective and rehabilitative services for a child  
8451 and his family when the child has been found to have been abused or neglected or is at risk of being  
8452 abused or neglected.

8453 "Child support services" means any civil, criminal or administrative action taken by the Division of  
8454 Child Support Enforcement to locate parents; establish paternity; and establish, modify, enforce, or  
8455 collect child support, or child and spousal support.

8456 "Child-welfare agency" means a child day center, child-placing agency, children's residential facility,  
8457 family day home, family day system, or independent foster home.

8458 "Children's residential facility" means any facility, child-caring institution, or group home that is  
8459 maintained for the purpose of receiving children separated from their parents or guardians for full-time  
8460 care, maintenance, protection and guidance, or for the purpose of providing independent living services  
8461 to persons between 18 and 21 years of age who are in the process of transitioning out of foster care.  
8462 Children's residential facility shall not include:

8463 1. A licensed or accredited educational institution whose pupils, in the ordinary course of events,  
8464 return annually to the homes of their parents or guardians for not less than two months of summer  
8465 vacation;

8466 2. An establishment required to be licensed as a summer camp by § 35.1-18; and

8467 3. A licensed or accredited hospital legally maintained as such.

8468 "Commissioner" means the Commissioner of the Department, his designee or authorized  
8469 representative.

8470 "Department" means the State Department of Social Services.

8471 "Department of Health and Human Services" means the Department of Health and Human Services  
8472 of the United States government or any department or agency thereof that may hereafter be designated  
8473 as the agency to administer the Social Security Act, as amended.

8474 "Disposable income" means that part of the income due and payable of any individual remaining  
8475 after the deduction of any amount required by law to be withheld.

8476 "Energy assistance" means benefits to assist low-income households with their home heating and  
8477 cooling needs, including, but not limited to, purchase of materials or substances used for home heating,  
8478 repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or  
8479 repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance  
8480 with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the  
8481 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 12 children under the age of 13, 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 12 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 16 years of age or older, and persons who are former foster care children between the ages of 18 and 21, that prepares them for the successful transition from foster care to self sufficiency.

"Independent living placement" means placement of a child at least 16 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.

"Kinship care" means the full-time care, nurturing, and protection of children by relatives.

"Local board" means the local board of social services representing one or more counties or cities.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Local director" means the director or his designated representative of the local department of the city or county.

"Merit system plan" means those regulations adopted by the Board in the development and operation of a system of personnel administration meeting requirements of the federal Office of Personnel Management.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in

8543 a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

8544 "Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to the  
8545 aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services; child  
8546 care; and general relief.

8547 "Qualified assessor" means an entity contracting with the Department of Medical Assistance Services  
8548 to perform nursing facility pre-admission screening or to complete the uniform assessment instrument for  
8549 a home and community-based waiver program, including an independent physician contracting with the  
8550 Department of Medical Assistance Services to complete the uniform assessment instrument for residents  
8551 of assisted living facilities, or any hospital that has contracted with the Department of Medical  
8552 Assistance Services to perform nursing facility pre-admission screenings.

8553 "Registered family day home" means any family day home that has met the standards for voluntary  
8554 registration for such homes pursuant to regulations adopted by the Board and that has obtained a  
8555 certificate of registration from the Commissioner.

8556 "Residential living care" means a level of service provided by an assisted living facility for adults  
8557 who may have physical or mental impairments and require only minimal assistance with the activities of  
8558 daily living. The definition of "residential living care" includes the services provided by independent  
8559 living facilities that voluntarily become licensed.

8560 "Social services" means foster care, adoption, adoption assistance, adult services, adult protective  
8561 services, child-protective services, domestic violence services, or any other services program  
8562 implemented in accordance with regulations adopted by the Board.

8563 "Special order" means an order imposing an administrative sanction issued to any party licensed  
8564 pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A  
8565 special order shall be considered a case decision as defined in § 2.2-4001.

8566 "Temporary Assistance for Needy Families" or "TANF" means the program administered by the  
8567 Department through which a relative can receive monthly cash assistance for the support of his eligible  
8568 children.

8569 "Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the  
8570 Temporary Assistance for Needy Families program for families in which both natural or adoptive  
8571 parents of a child reside in the home and neither parent is exempt from the Virginia Initiative for  
8572 Employment Not Welfare (VIEW) participation under § 63.2-609.

8573 "Title IV-E Foster Care" means a federal program authorized under §§ 472 and 473 of the Social  
8574 Security Act, as amended, and administered by the Department through which foster care is provided on  
8575 behalf of qualifying children.

8576 § 63.2-1503. Local departments to establish child-protective services; duties.

8577 A. Each local department shall establish child-protective services under a departmental coordinator  
8578 within such department or with one or more adjacent local departments that shall be staffed with  
8579 qualified personnel pursuant to regulations adopted by the Board. The local department shall be the  
8580 public agency responsible for receiving and responding to complaints and reports, except that (i) in cases  
8581 where the reports or complaints are to be made to the court and the judge determines that no local  
8582 department within a reasonable geographic distance can impartially respond to the report, the court shall  
8583 assign the report to the court services unit for evaluation; and (ii) in cases where an employee at a  
8584 private or state-operated hospital, institution or other facility, or an employee of a school board is  
8585 suspected of abusing or neglecting a child in such hospital, institution or other facility, or public school,  
8586 the local department shall request the Department and the relevant private or state-operated hospital,  
8587 institution or other facility, or school board to assist in conducting a joint investigation in accordance  
8588 with regulations adopted by the Board, in consultation with the Departments of Education, Health,  
8589 Medical Assistance Services, Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance  
8590 Abuse Services, Juvenile Justice and Corrections.

8591 B. The local department shall ensure, through its own personnel or through cooperative arrangements  
8592 with other local agencies, the capability of receiving reports or complaints and responding to them  
8593 promptly on a 24-hours-a-day, seven-days-per-week basis.

8594 C. The local department shall widely publicize a telephone number for receiving complaints and  
8595 reports.

8596 D. The local department shall upon receipt of a complaint, report immediately to the attorney for the  
8597 Commonwealth and the local law-enforcement agency and make available to them the records of the  
8598 local department when abuse or neglect is suspected in any case involving (i) death of a child; (ii)  
8599 injury or threatened injury to the child in which a felony or Class 1 misdemeanor is also suspected; (iii)  
8600 any sexual abuse, suspected sexual abuse or other sexual offense involving a child, including but not  
8601 limited to the use or display of the child in sexually explicit visual material, as defined in § 18.2-374.1;  
8602 (iv) any abduction of a child; (v) any felony or Class 1 misdemeanor drug offense involving a child; or  
8603 (vi) contributing to the delinquency of a minor in violation of § 18.2-371, and provide the attorney for  
8604 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. The local department shall develop, when practicable, memoranda of understanding for responding to reports of child abuse and neglect with local law enforcement and the attorney for the Commonwealth.

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 multidisciplinary 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. Multidisciplinary 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 may develop multidisciplinary teams to provide consultation to the local department during the investigation of selected cases involving child abuse or neglect, and to make recommendations regarding the prosecution of such cases. These teams may include, but are not limited to, members of the medical, mental health, legal and law-enforcement professions, including the attorney for the Commonwealth or his designee; a local child-protective services representative; and the guardian ad litem or other court-appointed advocate for the child. Any information exchanged for the purpose of such consultation shall not be considered a violation of §§ 63.2-102, 63.2-104 or § 63.2-105.

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

8666 abuse, injury, neglect or death of a child after the arrest of such person, shall not be used in evidence in  
8667 the case-in-chief against such person in the criminal proceeding on the question of guilt or innocence  
8668 over the objection of the accused, unless the statement was made after such person was fully advised (i)  
8669 of his right to remain silent, (ii) that anything he says may be used against him in a court of law, (iii)  
8670 that he has a right to the presence of an attorney during any interviews, and (iv) that if he cannot afford  
8671 an attorney, one will be appointed for him prior to any questioning.

8672 N. Notwithstanding any other provision of law, the local department, in accordance with Board  
8673 regulations, shall transmit information regarding founded complaints or family assessments and may  
8674 transmit other information regarding reports, complaints, family assessments and investigations involving  
8675 active duty military personnel or members of their household to family advocacy representatives of the  
8676 United States Armed Forces.

8677 O. The local department shall notify the custodial parent and make reasonable efforts to notify the  
8678 noncustodial parent as those terms are defined in § 63.2-1900 of a report of suspected abuse or neglect  
8679 of a child who is the subject of an investigation or is receiving family assessment, in those cases in  
8680 which such custodial or noncustodial parent is not the subject of the investigation.

8681 § 63.2-1528. Advisory Committee continued as Advisory Board.

8682 The Advisory Committee on Child Abuse and Neglect is continued and shall hereafter be known as  
8683 the Advisory Board on Child Abuse and Neglect. The Advisory Board shall be composed of nine  
8684 persons appointed by the Governor for three-year staggered terms, and permanent members including the  
8685 Superintendent of Public Instruction, the Commissioner of the Department of Health, the Commissioner  
8686 of the Department of Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse  
8687 Services, the Commissioner of the Department of Social Services, the Director of the Department of  
8688 Juvenile Justice, the Director of the Department of Corrections, the Director of the Department of  
8689 Criminal Justice Services, and the Attorney General of Virginia, or their designees. The Advisory Board  
8690 shall meet quarterly and, as the need may arise, advise the Department, Board and Governor on matters  
8691 concerning programs for the prevention and treatment of abused and neglected children and their  
8692 families and child abuse and neglect issues identified by the Commissioner of the Department of Social  
8693 Services.

8694 § 63.2-1603. Protection of adults; definitions.

8695 As used in this article:

8696 "Adult" means any person 60 years of age or older, or any person 18 years of age or older who is  
8697 incapacitated and who resides in the Commonwealth; provided, however, "adult" may include qualifying  
8698 nonresidents who are temporarily in the Commonwealth and who are in need of temporary or  
8699 emergency protective services.

8700 "Emergency" means that an adult is living in conditions that present a clear and substantial risk of  
8701 death or immediate and serious physical harm to himself or others.

8702 "Incapacitated person" means any adult who is impaired by reason of mental illness, ~~mental~~  
8703 ~~retardation~~, *intellectual disability*, physical illness or disability, advanced age or other causes to the  
8704 extent that the adult lacks sufficient understanding or capacity to make, communicate or carry out  
8705 responsible decisions concerning his or her well-being.

8706 § 63.2-1709. Enforcement and sanctions; assisted living facilities and adult day care centers; interim  
8707 administration; receivership, revocation, denial, summary suspension.

8708 A. Upon receipt and verification by the Commissioner of information from any source indicating an  
8709 imminent and substantial risk of harm to residents, the Commissioner may require an assisted living  
8710 facility to contract with an individual licensed by the Board of Long-Term Care Administrators, to be  
8711 either selected from a list created and maintained by the Department of Medical Assistance Services or  
8712 selected from a pool of appropriately licensed administrators recommended by the owner of the assisted  
8713 living facility, to administer, manage, or operate the assisted living facility on an interim basis, and to  
8714 attempt to bring the facility into compliance with all relevant requirements of law, regulation, or any  
8715 plan of correction approved by the Commissioner. Such contract shall require the interim administrator  
8716 to comply with any and all requirements established by the Department to ensure the health, safety, and  
8717 welfare of the residents. Prior to or upon conclusion of the period of interim administration,  
8718 management, or operation, an inspection shall be conducted to determine whether operation of the  
8719 assisted living facility shall be permitted to continue or should cease. Such interim administration,  
8720 management, or operation shall not be permitted when defects in the conditions of the premises of the  
8721 assisted living facility (i) present imminent and substantial risks to the health, safety, and welfare of  
8722 residents, and (ii) may not be corrected within a reasonable period of time. Any decision by the  
8723 Commissioner to require the employment of a person to administer, manage, or operate an assisted  
8724 living facility shall be subject to the rights of judicial review and appeal as provided in the  
8725 Administrative Process Act (§ 2.2-4000 et seq.). Actual and reasonable costs of such interim  
8726 administration shall be the responsibility of and shall be borne by the owner of the assisted living  
8727 facility.

B. 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~~ *Intellectual Disability* 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.

C. The Commissioner may issue a summary order of suspension of the license to operate the assisted living facility pursuant to the procedures hereinafter set forth in conjunction with any proceeding for revocation, denial, or other action when conditions or practices exist that pose an imminent and substantial threat to the health, safety, and welfare of the residents. Before a summary order of suspension shall take effect, the Commissioner shall issue to the assisted living facility a notice of summary order of suspension setting forth (i) the procedures for the summary order of suspension, (ii) hearing and appeal rights as provided under this subsection, and (iii) facts and evidence that formed the basis for which the summary order of suspension is sought. Such notice shall be served on the assisted living facility or its designee as soon as practicable thereafter by personal service or certified mail, return receipt requested, to the address of record of the assisted living facility. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be presided over by a hearing officer selected by the Commissioner from a list prepared by the Executive Secretary of the Supreme Court of Virginia and shall be held as soon as practicable, but in no event later than 15 business days following service of the notice of hearing; however, the hearing officer may grant a written request for a continuance, not to exceed an additional 10 business days, for good cause shown. After such hearing, the hearing officer shall provide to the Commissioner written findings and conclusions, together with a recommendation whether the license should be summarily suspended, whereupon the Commissioner shall adopt the hearing officer's recommended decision unless to do so would be an error of law or Department policy. Any final agency case decision in which the Commissioner rejects a hearing officer's recommended decision shall state with particularity the basis for rejection. The Commissioner shall issue: (a) a final order of summary suspension or (b) an order that summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the assisted living facility may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following service of the order. A copy of any final order of summary suspension shall be prominently displayed by the provider at each public entrance of the facility, or in lieu thereof, the provider may display a written statement summarizing the terms of the order in a prominent location, printed in a clear and legible size and typeface, and identifying the location within the facility where the final order of summary suspension may be reviewed.

Upon appeal, the sole issue before the court shall be whether the Department had reasonable grounds to require the assisted living facility to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. Any concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary order of suspension. Failure to comply with the summary order of suspension shall constitute an offense under subdivision 1 of § 63.2-1712. All agencies and subdivisions of the Commonwealth shall cooperate with the Commissioner in the relocation of residents of an assisted living facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to residents.

D. Notice of the Commissioner's intent to revoke or deny renewal of the license for the assisted living facility shall be provided by the Department and a copy of such notice shall be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations. In determining whether to deny, revoke, or summarily suspend a license, the Commissioner may choose to deny, revoke, or summarily suspend only certain authority of the assisted living facility to operate, and may restrict or modify the assisted living facility's authority to provide certain services or perform certain functions that the Commissioner determines should be restricted or modified in order to protect the health, safety, or welfare of the residents. Such denial, revocation, or

summary suspension of certain services or functions may be appealed as otherwise provided in this subtitle for any denial, revocation, or summary suspension.

§ 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~~ *Intellectual Disability* 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, 2007, (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, 2007, 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, 2007; 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 eligibility 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. The results of the criminal history background check must be received prior to permitting an applicant to work with children.

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 is eligible to have responsibility for the safety and well-being of children. Except as otherwise provided in subsection B, no children's residential facility regulated or operated by the Departments of Education; Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services; Military Affairs; or Social Services shall hire for compensated employment or allow to volunteer or provide contractual services persons who have been (i) convicted of or are 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; malicious wounding by mob as set out in § 18.2-41; abduction as set out in § 18.2-47 A; 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; threat as set out in § 18.2-60; any felony stalking violation 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; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation relating to distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 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 § 18.2-361; taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1; abuse or neglect of children as set out in § 18.2-371.1, including 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; incest as set out in § 18.2-366; abuse or 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; or (ii) convicted of any felony violation relating to possession of drugs set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date for employment, to be a volunteer, or to provide contractual services; or (iii) convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and continue on probation or parole or have failed to pay required court costs. The provisions of this section also shall apply to structured residential programs, excluding secure detention facilities, established pursuant to § 16.1-309.3 for juvenile offenders cited in a complaint for intake or in a petition before the court that alleges the juvenile is delinquent or in need of services or supervision.

B. Notwithstanding the provisions of subsection A, a children's residential facility may hire for



compensated employment or for volunteer or contractual service purposes persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed such offense in the scope of his employment, volunteer, or contractual services.

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 assume duties that do not involve contact with children pending receipt of the report, the children's residential facility is not precluded from suspending the applicant from his position pending a final determination of the applicant's eligibility 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.

C. Those individuals listed in clauses (i), (ii) and (iii) of subsection A also shall 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 receive the results of the central registry search prior to permitting an applicant to work alone with children. Children's residential facilities regulated or operated by the Departments of Education; Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services; Military Affairs; and Social Services shall not hire for compensated employment or allow to volunteer or provide contractual services, persons who have a founded case of child abuse or neglect. Every residential facility for juveniles which is regulated or operated by the Department of Juvenile Justice shall be authorized to obtain a copy of the information from the central registry.

D. The Boards of Social Services; Education; Juvenile Justice; and Mental Health, ~~Mental Retardation~~ *Intellectual Disability* 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.

§ 63.2-1735. 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. Notwithstanding the provisions of § 2.2-2813, reimbursement for travel expenses of members shall be limited to in-state travel. 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 National Association for the Education of Young Children; one representative of the National Academy of Early Childhood Programs; one representative of the Association of Christian Schools International; one representative of the American Association of Christian Schools; one representative of the National Early Childhood Program Accreditation; one representative of the National Accreditation Council for Early Childhood Professional Personnel and Programs; one representative of the International Academy for Private Education; one representative of the American Montessori Society; one representative of the International Accreditation and Certification of Childhood Educators, Programs, and Trainers; one representative of the National Accreditation Commission; 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~~ *Intellectual Disability* and Substance Abuse

8912 Services for therapeutic recreation programs.

8913 All staff and other support services required by the Council shall be provided by the Department.

8914 § 63.2-1805. Admissions and discharge.

8915 A. The Board shall adopt regulations:

8916 1. Governing admissions to assisted living facilities;

8917 2. Requiring that each assisted living facility prepare and provide a statement, in a format prescribed  
8918 by the Department, to any prospective resident and his legal representative, if any, prior to admission  
8919 and upon request, that discloses information, fully and accurately in plain language, about the (i)  
8920 services; (ii) fees, including clear information about what services are included in the base fee and any  
8921 fees for additional services; (iii) admission, transfer, and discharge criteria, including criteria for transfer  
8922 to another level of care within the same facility or complex; (iv) general number and qualifications of  
8923 staff on each shift; (v) range, frequency, and number of activities provided for residents; and (vi)  
8924 ownership structure of the facility;

8925 3. Establishing a process to ensure that each resident admitted or retained in an assisted living  
8926 facility receives appropriate services and periodic independent reassessments and reassessments when  
8927 there is a significant change in the resident's condition in order to determine whether a resident's needs  
8928 can continue to be met by the facility and whether continued placement in the facility is in the best  
8929 interests of the resident;

8930 4. Governing appropriate discharge planning for residents whose care needs can no longer be met by  
8931 the facility;

8932 5. Addressing the involuntary discharge of residents;

8933 6. Requiring that residents are informed of their rights pursuant to § 63.2-1808 at the time of  
8934 admission;

8935 7. Establishing a process to ensure that any resident temporarily detained in a facility pursuant to  
8936 §§ 37.2-809 through 37.2-813 is accepted back in the assisted living facility if the resident is not  
8937 involuntarily admitted pursuant to §§ 37.2-814 through 37.2-819; and

8938 8. Requiring that each assisted living facility train all employees who are mandated to report adult  
8939 abuse, neglect, or exploitation pursuant to § 63.2-1606 on such reporting procedures and the  
8940 consequences for failing to make a required report.

8941 B. If there are observed behaviors or patterns of behavior indicative of mental illness, ~~mental~~  
8942 ~~retardation~~, *intellectual disability*, substance abuse, or behavioral disorders, as documented in the  
8943 uniform assessment instrument completed pursuant to § 63.2-1804, the facility administrator or  
8944 designated staff member shall ensure that an evaluation of the individual is or has been conducted by a  
8945 qualified professional as defined in regulations. If the evaluation indicates a need for mental health,  
8946 ~~mental retardation~~*intellectual disability*, substance abuse, or behavioral disorder services, the facility shall  
8947 provide (i) a notification of the resident's need for such services to the authorized contact person of  
8948 record when available and (ii) a notification of the resident's need for such services to the community  
8949 services board or behavioral health authority established pursuant to Title 37.2 that serves the city or  
8950 county in which the facility is located, or other appropriate licensed provider. The Department shall not  
8951 take adverse action against a facility that has demonstrated and documented a continual good faith effort  
8952 to meet the requirements of this subsection.

8953 C. The Department shall not order the removal of a resident from an assisted living facility if (i) the  
8954 resident, the resident's family, the resident's physician, and the facility consent to the resident's continued  
8955 stay in the assisted living facility and (ii) the facility is capable of providing, obtaining, or arranging for  
8956 the provision of necessary services for the resident, including, but not limited to, home health care  
8957 and/or hospice care.

8958 D. Notwithstanding the provisions of subsection C above, assisted living facilities shall not admit or  
8959 retain an individual with any of the following conditions or care needs:

8960 1. Ventilator dependency.

8961 2. Dermal ulcers III and IV, except those stage III ulcers that are determined by an independent  
8962 physician to be healing.

8963 3. Intravenous therapy or injections directly into the vein except for intermittent intravenous therapy  
8964 managed by a health care professional licensed in Virginia or as permitted in subsection E.

8965 4. Airborne infectious disease in a communicable state that requires isolation of the individual or  
8966 requires special precautions by the caretaker to prevent transmission of the disease, including diseases  
8967 such as tuberculosis and excluding infections such as the common cold.

8968 5. Psychotropic medications without appropriate diagnosis and treatment plans.

8969 6. Nasogastric tubes.

8970 7. Gastric tubes except when the individual is capable of independently feeding himself and caring  
8971 for the tube or as permitted in subsection E.

8972 8. An imminent physical threat or danger to self or others is presented by the individual.

8973 9. Continuous licensed nursing care (seven-days-a-week, 24-hours-a-day) is required by the

individual.

10. Placement is no longer appropriate as certified by the individual's physician.

11. Maximum physical assistance is required by the individual as documented by the uniform assessment instrument and the individual meets Medicaid nursing facility level-of-care criteria as defined in the State Plan for Medical Assistance, unless the individual's independent physician determines otherwise. 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. The assisted living facility determines that it cannot meet the individual's physical or mental health care needs.

13. Other medical and functional care needs that the Board determines cannot be met properly in an assisted living facility.

E. Except for auxiliary grant recipients, at the request of the resident in an assisted living facility and when his independent physician determines that it is appropriate, (i) care for the conditions or care needs defined in subdivisions D 3 and D 7 may be provided to the resident by a licensed physician, a licensed nurse or a nurse holding a multistate licensure privilege under a physician's treatment plan, or a home care organization licensed in Virginia or (ii) care for the conditions or care needs defined in subdivision D 7 may also be provided to the resident by facility staff if the care is delivered in accordance with the regulations of the Board of Nursing for delegation by a registered nurse, 18 VAC 90-20-420 et seq.

The Board shall adopt regulations to implement the provisions of this subsection.

F. In adopting regulations pursuant to subsections A, B, C and D, and E the Board shall consult with the Departments of Health and Mental Health, ~~Mental Retardation~~ *Intellectual Disability* and Substance Abuse Services.

§ 66-18. Examination and placing of such children.

The Department shall make a careful physical and mental examination of every child committed to it by the courts, investigate the personal and family history of the child and his environment, and place such children at such facilities as are available. Any children committed to the Department and afterwards found to be eligible for commitment by proper proceedings to any state hospital or admission to a training center for the ~~mentally retarded~~ *intellectually disabled* shall take precedence as to admission over all others and shall in all cases be received into the state hospital or training center within forty-five days.

§ 66-20. Observation and treatment of mentally ill and intellectually disabled children.

After commitment of any child to the Department, if the Department finds, as a result of psychiatric examinations and case study, that such child is mentally ill or ~~mentally retarded~~ *intellectually disabled*, it shall be the duty of the Department to obtain treatment for the child's mental condition. If the Department determines that transfer to a state hospital, training center, or other appropriate treatment facility is required to further diagnose or treat the child's mental condition, the proceedings shall be in accordance with the provisions of § 37.2-806 or §§ 16.1-341 through 16.1-345, except that provisions requiring consent of the child's parent or guardian for treatment shall not apply in such cases. No child transferred to a state hospital pursuant to this section or the provisions of Title 37.2 shall, however, be held or cared for in any maximum security unit where adults determined to be criminally insane reside and such child shall be kept separate and apart from such adults.