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## SENATE BILL NO. 299

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services  
on January 27, 2012)

(Patron Prior to Substitute—Senator Howell)

A BILL to amend and reenact §§ 63.2-900.1 and 63.2-901.1 of the Code of Virginia, relating to kinship foster care placements.

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

**1. That §§ 63.2-900.1 and 63.2-901.1 of the Code of Virginia are amended and reenacted as follows:**

§ 63.2-900.1. Kinship foster care.

A. The local board shall, in accordance with regulations adopted by the Board, determine whether the child has a relative who is eligible to become a kinship foster parent.

B. Kinship foster care placements pursuant to this section shall be subject to all requirements of, and shall be eligible for all services related to, foster care placement contained in this chapter. *However, the Commissioner may grant a variance from the requirements of this chapter pursuant to 42 U.S.C. § 671(a)(10) and allow the placement of a child in an arrangement for kinship care as defined in § 63.2-100 or with a kinship foster care provider when he determines that (i) the requirement would impose a substantial hardship on the kinship foster care provider and (ii) the variance would not adversely affect the safety and well-being of the child to be placed in an arrangement for kinship care as defined in § 63.2-100 or with the kinship foster care provider. Variances granted pursuant to this subsection shall be considered and, if appropriate, granted on a case-by-case basis and shall include consideration of the unique needs of each child to be placed.*

C. The kinship foster parent shall be eligible to receive payment at the full foster care rate for the care of the child.

§ 63.2-901.1. Criminal history and central registry check for placements of children.

A. Each local board and licensed child-placing agency shall obtain, in accordance with regulations adopted by the Board, criminal history record information from the Central Criminal Records Exchange and the Federal Bureau of Investigation through the Central Criminal Records Exchange and the results of a search of the child abuse and neglect central registry of any individual with whom the local board or licensed child-placing agency is considering placing a child on an emergency, temporary or permanent basis, including the birth parent of a child in foster care placement, unless the birth parent has revoked an entrustment agreement pursuant to § 63.2-1223 or 63.2-1817 or a local board or birth parent revokes a placement agreement while legal custody remains with the parent, parents, or guardians pursuant to § 63.2-900. The local board or licensed child-placing agency shall also obtain such background checks on all adult household members residing in the home of the individual with whom the child is to be placed pursuant to subsection B. Such state criminal records or registry search shall be at no cost to the individual. The local board or licensed child-placing agency ~~must~~ *shall* pay for the national fingerprint criminal history record check or may require such individual to pay the cost of the fingerprinting or the national fingerprinting criminal history record check or both. In addition to the fees assessed by the Federal Bureau of Investigation, the designated state agency may assess a fee for responding to requests required by this section.

B. Background checks pursuant to this section require the following:

1. A sworn statement or affirmation disclosing whether or not the individual has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and whether or not the individual has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. That the individual submit to fingerprinting and provide personal descriptive information to be forwarded along with the individual's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information. The local board or licensed child-placing agency shall inform the individual 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 decision is made of the individual's fitness to have responsibility for the safety and well-being of children.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall forward it to the designated state agency. The state agency shall, upon receipt of an individual'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 local board or licensed child-placing agency whether the individual meets the criteria for having responsibility for

60 the safety and well-being of children based on whether or not the individual has ever been convicted of  
61 or is the subject of pending charges set forth in § 63.2-1719 or an equivalent set forth in another state.  
62 Copies of any information received by a local board or licensed child-placing agency pursuant to this  
63 section shall be available to the state agency that regulates or operates such a child-placing agency but  
64 shall not be disseminated further; and

65 3. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of  
66 child abuse or neglect. In addition, a search of the child abuse and neglect registry maintained by any  
67 other state pursuant to the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248, in  
68 which a prospective parent or other adult in the home has resided in the preceding five years.

69 C. In emergency circumstances, each local board may obtain, from a criminal justice agency,  
70 criminal history record information from the Central Criminal Records Exchange and the Federal Bureau  
71 of Investigation through the Virginia Criminal Information Network (VCIN) for the criminal records  
72 search authorized by this section. Within three days of placing a child, the local board shall require the  
73 individual for whom a criminal history record information check was requested to submit to  
74 fingerprinting and provide personal descriptive information to be forwarded along with the fingerprints  
75 through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose  
76 of obtaining criminal record history information, pursuant to subsection B. The child shall be removed  
77 from the home immediately if any adult resident fails to provide such fingerprints and written  
78 permission to perform a criminal history record check when requested.

79 D. Any individual with whom the local board is considering placing a child on an emergency basis  
80 shall submit to a search of the central registry maintained pursuant to § 63.2-1515 and the Adam Walsh  
81 Child Protection and Safety Act of 2006, Pub. L. 109-248 for any founded complaint of child abuse or  
82 neglect. The search of the central registry must occur prior to emergency placement. Such central  
83 registry search shall be at no cost to the individual. Prior to emergency placement, the individual shall  
84 provide a written statement of affirmation disclosing whether he has ever been the subject of a founded  
85 case of child abuse or neglect within or outside the Commonwealth. Child-placing agencies shall not  
86 approve individuals with a founded complaint of child abuse as foster or adoptive parents.

87 E. The child-placing agency shall not approve a foster or adoptive home if any individual has a  
88 record of an offense defined in § 63.2-1719 or a founded complaint of abuse or neglect as maintained in  
89 registries pursuant to § 63.2-1515 and 42 U.S.C.S. 16901 et seq. A child-placing agency may approve as  
90 a foster parent an applicant convicted of not more than one misdemeanor as set out in § 18.2-57, not  
91 involving the abuse, neglect, or moral turpitude of a minor, provided 10 years have elapsed following  
92 the conviction.

93 F. A local board or child-placing agency may approve as an arrangement for kinship care as  
94 defined in § 63.2-100 or as a kinship foster care parent an applicant convicted of the following offenses,  
95 provided that 10 years have elapsed from the date of the conviction and the local board or  
96 child-placing agency makes a specific finding that approving the arrangement for kinship care as  
97 defined in § 63.2-100 or the kinship foster care placement would not adversely affect the safety and  
98 well-being of the child: (i) a felony conviction for possession of drugs as set out in Article 1 (§ 18.2-247  
99 et seq.) of Chapter 7 of Title 18.2, but not including a felony conviction for possession of drugs with the  
100 intent to distribute; (ii) a misdemeanor conviction for arson as set out in Article 1 (§ 18.2-77 et seq.) of  
101 Chapter 5 of Title 18.2; or (iii) an equivalent offense in another state.