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SENATE BILL NO. 967

Offered January 14, 2015

Prefiled January 10, 2015

A BILL to amend and reenact §§ 16.1-241, 63.2-100, and 63.2-1302 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 16.1-283.3 and by adding in Chapter 9 of Title 63.2 an article numbered 2, consisting of sections numbered 63.2-916 through 63.2-921, relating to extended foster care services and support.

Patrons—Favola and Ebbin; Delegate: Peace

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-241, 63.2-100 and 63.2-1302 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 16.1-283.3 and by adding in Chapter 9 of Title 63.2 an article numbered 2, consisting of sections numbered 63.2-916 through 63.2-921, as follows:

§ 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.

In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a

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59 violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a
60 lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be
61 divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

62 The authority of the juvenile court to adjudicate matters involving the custody, visitation, support,
63 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,
64 father or legal guardian but shall include petitions filed at any time by any party with a legitimate
65 interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not
66 be limited to, grandparents, step-grandparents, stepparents, former stepparents, blood relatives and family
67 members. A party with a legitimate interest shall not include any person (i) whose parental rights have
68 been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives
69 from or through a person whose parental rights have been terminated by court order, either voluntarily
70 or involuntarily, including, but not limited to, grandparents, stepparents, former stepparents, blood
71 relatives and family members, if the child subsequently has been legally adopted, except where a final
72 order of adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of
73 subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another
74 state, the United States, or any foreign jurisdiction, when the child who is the subject of the petition was
75 conceived as a result of such violation. The authority of the juvenile court to consider a petition
76 involving the custody of a child shall not be proscribed or limited where the child has previously been
77 awarded to the custody of a local board of social services.

78 B. The admission of minors for inpatient treatment in a mental health facility in accordance with the
79 provisions of Article 16 (§ 16.1-335 et seq.) and the involuntary admission of a person with mental
80 illness or judicial certification of eligibility for admission to a training center for persons with
81 intellectual disability in accordance with the provisions of Chapter 8 (§ 37.2-800 et seq.) of Title 37.2.
82 Jurisdiction of the involuntary admission and certification of adults shall be concurrent with the general
83 district court.

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

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

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

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

97 1. Who has been abused or neglected;

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

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

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

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

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

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

117 In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to
118 determining whether or not there is probable cause. Any objection based on jurisdiction under this
119 subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial,
120 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, 16.1-253.4, or 16.1-279.1, and all petitions filed for the purpose of obtaining an order of protection pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10 if either the alleged victim or the respondent is a juvenile.

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.).

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. A circuit court shall have concurrent original jurisdiction to the extent provided for in § 20-49.2.

R. [Repealed.]

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 for the purpose of obtaining the court's assistance with the execution of consent to an adoption when the consent to an adoption is executed pursuant to the laws of another state and the laws of that state provide for the execution of consent to an adoption in the court of the Commonwealth.

W. 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.

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

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

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

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

194 A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent
195 has been obtained or the minor delivers to the physician a court order entered pursuant to this section
196 and the physician or his agent provides such notice as such order may require. However, neither consent
197 nor judicial authorization nor notice shall be required if the minor declares that she is abused or
198 neglected and the attending physician has reason to suspect that the minor may be an abused or
199 neglected child as defined in § 63.2-100 and reports the suspected abuse or neglect in accordance with
200 § 63.2-1509; or if there is a medical emergency, in which case the attending physician shall certify the
201 facts justifying the exception in the minor's medical record.

202 For purposes of this subsection:

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

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

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

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

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

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

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

233 X. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) relating to standby guardians for minor
234 children.

235 Y. *Petitions filed pursuant to § 16.1-283.3 for review of voluntary agreements for extended foster
236 care services and support for persons who meet the eligibility criteria set forth in § 63.2-918.*

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

239 Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of
240 any process in a proceeding pursuant to subdivision A 3, except as provided in subdivision A 6 of
241 § 17.1-272, or subsection B, D, M, or R.

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

§ 16.1-283.3. Review of voluntary agreements for extended foster care services and support.

A. A local department shall file a petition for review of a voluntary agreement for extended foster care services and support entered into pursuant to § 63.2-920 with the juvenile and domestic relations district court for the county or city served by the local board that had custody of the program participant prior to his reaching 18 years of age within 30 days of the date on which the local board and the program participant entered into the signed, written agreement. The petition shall include documentation of the program participant's last foster care placement and the local department that had custody of the program participant at the time of such placement, a copy of the signed voluntary agreement for extended foster care services and support and the case plan established pursuant to § 63.2-919, and any other information that the local department or program participant may wish the court to consider.

B. Upon receiving the petition filed by the local department, the court shall schedule a hearing to be held as soon as possible, but in no case more than 45 days after the filing of the petition, to determine whether the terms of such agreement are in the best interests of the program participant. The court shall appoint legal counsel for the program participant, who may be the guardian ad litem who represented the program participant when the program participant was a minor in the custody of the local board and who shall be compensated in accordance with § 16.1-267. The program participant may waive the appointment of counsel for the purposes of the hearing. The court may, with the consent of the program participant, re-appoint or continue the appointment of the court-appointed special advocate who served the program participant when the program participant was a minor, or appoint another court-appointed special advocate if the previous court-appointed special advocate is unavailable.

The court shall provide notice of the hearing and copy of the signed voluntary agreement for extended foster care services and support, the case plan, and any other information included with the petition to the program participant, the program participant's legal counsel, the petitioning local department of social services, and such other person having a legitimate interest in the hearing.

C. At the conclusion of the hearing, and following presentation of evidence by the local department of social services, the program participant, and the program participant's legal counsel or court-appointed special advocate, if appointed, the court may:

1. Approve the voluntary agreement for extended foster care services and support and the case plan as presented;

2. Approve the voluntary agreement for extended foster care services and support and the case plan with revisions, provided such revisions are agreed to by both parties; or

3. Refuse to approve the voluntary agreement for extended foster care services and support or the case plan and require the local department to submit a revised voluntary agreement for extended foster care services and support or a revised case plan within 30 days. The court may require the local department to provide additional services or support, as authorized by law, in the revised plan.

D. The court may schedule a subsequent review hearing not later than six months after the initial hearing at which the initial voluntary agreement for extended foster care services and support and case plan were approved to review the program participant's progress and the provision of services and support by the local department. If judicial review is continued, review hearings shall be held every six months unless otherwise ordered by the court.

§ 63.2-100. Definitions.

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

"Abused or neglected child" means any child less than 18 years of age:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child. Further, a 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 Behavioral Health and Developmental 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. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is a written or oral expression of consent by that adult.

"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 Behavioral Health and Developmental 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 licensed by the Department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.), but including any portion of the

facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

"Auxiliary grants" means cash payments made to certain aged, blind or disabled individuals who receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive these benefits except for excess income.

"Birth family" or "birth sibling" means the child's biological family or biological sibling.

"Birth parent" means the child's biological parent and, for purposes of adoptive placement, means parent(s) by previous adoption.

"Board" means the State Board of Social Services.

"Child" means (i) any natural person under 18 years of age and (ii) *for the purposes of extended foster cares services and support pursuant to Article 2 (§ 63.2-916 et seq.) of Chapter 9, any natural person who has reached the age of 18 years but has not yet reached the age of 21 years.*

"Child day center" means a child day program offered to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

"Child-placing agency" means any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to § 63.2-1819 or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child-protective services" means the identification, receipt and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child support services" means any civil, criminal or administrative action taken by the Division of Child Support Enforcement to locate parents; establish paternity; and establish, modify, enforce, or collect child support, or child and spousal support.

"Child-welfare agency" means a child day center, child-placing agency, children's residential facility, family day home, family day system, or independent foster home.

"Children's residential facility" means any facility, child-caring institution, or group home that is maintained for the purpose of receiving children separated from their parents or guardians for full-time care, maintenance, protection and guidance, or for the purpose of providing independent living services to persons between 18 and 21 years of age who are in the process of transitioning out of foster care. Children's residential facility shall not include:

1. A licensed or accredited educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer vacation;

2. An establishment required to be licensed as a summer camp by § 35.1-18; and

3. A licensed or accredited hospital legally maintained as such.

"Commissioner" means the Commissioner of the Department, his designee or authorized representative.

"Department" means the State Department of Social Services.

"Department of Health and Human Services" means the Department of Health and Human Services of the United States government or any department or agency thereof that may hereafter be designated as the agency to administer the Social Security Act, as amended.

"Disposable income" means that part of the income due and payable of any individual remaining after the deduction of any amount required by law to be withheld.

"Energy assistance" means benefits to assist low-income households with their home heating and cooling needs, including, but not limited to, purchase of materials or substances used for home heating, repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance

428 with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the
429 Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

430 "Family day home" means a child day program offered in the residence of the provider or the home
431 of any of the children in care for one through 12 children under the age of 13, exclusive of the
432 provider's own children and any children who reside in the home, when at least one child receives care
433 for compensation. The provider of a licensed or registered family day home shall disclose to the parents
434 or guardians of children in their care the percentage of time per week that persons other than the
435 provider will care for the children. Family day homes serving six through 12 children, exclusive of the
436 provider's own children and any children who reside in the home, shall be licensed. However, no family
437 day home shall care for more than four children under the age of two, including the provider's own
438 children and any children who reside in the home, unless the family day home is licensed or voluntarily
439 registered. However, a family day home where the children in care are all grandchildren of the provider
440 shall not be required to be licensed.

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

447 "Foster care placement" means placement of a child through (i) an agreement between the parents or
448 guardians and the local board where legal custody remains with the parents or guardians or (ii) an
449 entrustment or commitment of the child to the local board or licensed child-placing agency.

450 "Foster home" means the place of residence of any natural person in which any child, other than a
451 child by birth or adoption of such person, resides as a member of the household.

452 "General relief" means money payments and other forms of relief made to those persons mentioned
453 in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with §
454 63.2-401.

455 "Independent foster home" means a private family home in which any child, other than a child by
456 birth or adoption of such person, resides as a member of the household and has been placed therein
457 independently of a child-placing agency except (i) a home in which are received only children related by
458 birth or adoption of the person who maintains such home and children of personal friends of such
459 person and (ii) a home in which is received a child or children committed under the provisions of
460 subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8.

461 "Independent living" means a planned program of services designed to assist a child age 16 and over
462 and persons who are former foster care children between the ages of 18 and 21 in transitioning to
463 self-sufficiency.

464 "Independent living arrangement" means placement of a child at least 16 years of age who is in the
465 custody of a local board or licensed child-placing agency and has been placed by the local board or
466 licensed child-placing agency in a living arrangement in which he does not have daily substitute parental
467 supervision.

468 "Independent living services" means services and activities provided to a child in foster care 14 years
469 of age or older who was committed or entrusted to a local board of social services, child welfare
470 agency, or private child-placing agency. "Independent living services" may also mean services and
471 activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached
472 the age of 21 years or (ii) is at least 18 years of age but who has not yet reached 21 years of age and
473 who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of
474 a local board of social services. Such services shall include counseling, education, housing, employment,
475 and money management skills development, access to essential documents, and other appropriate
476 services to help children or persons prepare for self-sufficiency.

477 "Independent physician" means a physician who is chosen by the resident of the assisted living
478 facility and who has no financial interest in the assisted living facility, directly or indirectly, as an
479 owner, officer, or employee or as an independent contractor with the residence.

480 "Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster
481 care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other
482 entity authorized to make such placements in accordance with the laws of the foreign country under
483 which it operates.

484 "Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care
485 placement or in the home of the child's parent or with a relative or nonagency guardian, into or out of
486 the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or
487 nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the
488 action of any court.

489 "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 a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to the aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services; child care; and general relief.

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

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

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

"Social services" means foster care, adoption, adoption assistance, child-protective services, domestic violence services, or any other services program implemented in accordance with regulations adopted by the Board. Social services also includes adult services pursuant to Article 4 (§ 51.5-144 et seq.) of Chapter 14 of Title 51.5 and adult protective services pursuant to Article 5 (§ 51.5-148) of Chapter 14 of Title 51.5 provided by local departments of social services in accordance with regulations and under the supervision of the Commissioner for Aging and Rehabilitative Services.

"Special order" means an order imposing an administrative sanction issued to any party licensed pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A special order shall be considered a case decision as defined in § 2.2-4001.

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

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

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

Article 2.

Extended Foster Care Services and Support.

§ 63.2-916. Definitions.

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

"Case plan" means the plan developed by the local department for every participant in the Program in accordance with the requirements of 42 U.S.C. § 675(1).

"Extended foster care services and support" means the services and support available in the Program to eligible individuals pursuant to this article.

"Local department" means the local department of social services of the county or city represented by the local board of social services having custody and care of a child when he reached the age of 18 years.

"Program" means the Extended Foster Care Services and Support Program.

"Program participant" means a person described in § 63.2-918.

"Supervised independent living setting" means housing that has been approved by the local department as appropriate for the program participant and consistent with federal guidelines on supervised settings in which program participants may reside independently. "Supervised independent

551 living setting" may include a college dormitory, apartment, housing shared with a family member or
552 spouse, or other appropriate housing option. "Supervised independent living setting" does not mean a
553 residential facility or group home.

554 "Voluntary agreement for extended foster care services and support" means a binding written
555 agreement between a local department and a program participant entered into in accordance with the
556 provisions of § 63.2-920.

557 **§ 63.2-917. Extended Foster Care Services and Support Program established; program services.**

558 Any person who meets the criteria set forth in § 63.2-918 shall be eligible for extended foster care
559 services and support through the Extended Foster Care Services and Support Program pursuant to this
560 article. Such services and support shall be designed to assist the program participant in transitioning to
561 adulthood, becoming self-sufficient, and creating permanent positive relationships. Participation in the
562 Program shall be voluntary. The Program shall at all times recognize and respect the autonomy of the
563 program participant. Nothing in this article shall be construed to abrogate any other rights that a
564 person who has reached the age of 18 years may have in accordance with any existing law.

565 **§ 63.2-918. Eligibility.**

566 A. A person shall be eligible to participate in the Program if he:

567 1. Has reached the age of 18 years but has not yet reached the age of 21 years;

568 2. Was in the custody of a local board of social services (i) prior to attaining the age of 18 years,
569 remained in foster care upon reaching the age of 18 years, and was in the custody of the local board as
570 a result of a court order finding that he was an abused or neglected child, a child at risk of abuse or
571 neglect, a child in need of services, or a child in need of supervision; a court order approving an
572 entrustment agreement; a placement agreement between the local board and his parent or guardian; a
573 petition for relief of custody; or a court order finding that the child was delinquent or had committed a
574 status offense or (ii) immediately prior to his commitment to the Department of Juvenile Justice and is
575 transitioning from commitment to the Department of Juvenile Justice to self-sufficiency;

576 3. Is (i) completing secondary education or an equivalent credential, (ii) enrolled in an institution
577 that provides postsecondary or vocational education, (iii) employed for at least 80 hours per month, (iv)
578 participating in a program or activity designed to promote employment or remove barriers to
579 employment, or (v) incapable of participating in any of the activities described in clauses (i) through
580 (iv) due to a medical condition, the existence of which is supported by regularly updated information in
581 the case plan of the program participant;

582 4. Resides in the Commonwealth or in a state that shares a border with the Commonwealth; and

583 5. Has entered into a voluntary agreement for extended foster care services and support pursuant to
584 § 63.2-620.

585 **§ 63.2-919. Extended foster care services and support.**

586 A. Individuals participating in the Program shall be eligible for the following program services and
587 support:

588 1. Medical assistance services provided in accordance with the state plan for medical assistance
589 pursuant to § 32.1-325;

590 2. Foster care maintenance payments in an amount that shall not be less than the amount of foster
591 care maintenance paid on behalf of the program participant immediately prior to his exiting foster care;
592 and

593 3. Case management services.

594 B. A person participating in the Program may choose to reside (i) in a foster family home or (ii) in
595 a supervised independent living setting. In cases in which the program participant chooses to reside in a
596 foster family home, foster care maintenance payments paid pursuant to subdivision A 2 shall be paid to
597 the foster parents. If the program participant chooses to reside in a supervised independent living
598 setting, foster care maintenance payments paid pursuant to subdivision A 2 may be paid directly to the
599 program participant.

600 C. The local department shall designate a case worker who shall provide case management services
601 for each program participant. Case workers assigned to program participants pursuant to this
602 subsection shall be trained regarding the provision of extended foster care services and support,
603 including transition support, and shall have knowledge of the various resources available to the
604 program participant in the local community.

605 D. The local department shall, jointly with the program participant, develop a case plan for every
606 program participant. Such plan shall describe (i) the identified housing situation or living arrangement
607 for the program participant, (ii) the resources available to assist the program participant in the
608 transition from the Program to adulthood and independence, (iii) the specific services and support,
609 including any foster care maintenance payments, that will be provided to the program participant to
610 meet his individual needs, and (iv) continuing efforts to be undertaken by the local department to
611 achieve permanency and create permanent connections for the program participant. The local
612 departments shall fulfill all case plan obligations consistent with the applicable provisions of 42 U.S.C.

§ 675a for all program participants. Services and support identified in the case plan shall be initiated within 30 days of the program participant becoming eligible for services in accordance with § 63.2-918.

§ 63.2-920. Voluntary agreement for extended foster care services and support.

A. The local department shall enter into a voluntary agreement for extended foster care services and support with a program participant prior to initiating program services and support. Such agreement shall be made in writing and signed by a representative of the local department and the program participant and shall include:

1. A requirement that the program participant continue to meet the eligibility criteria set forth in § 63.2-918 while enrolled in the Program and a statement that extended foster care services and support shall be terminated if the individual fails to continue to meet the requirements for eligibility;

2. A statement of the specific services and support, including the amount of any foster care maintenance payments made to or on behalf of the program participant in accordance with subsection B of § 63.2-919, to be provided to the program participant;

3. A statement that participation in the Program is voluntary for the program participant and that the program participant may terminate services provided through the Program at any time;

4. A statement of specific conditions that may result in the program participant becoming ineligible for participation in the Program and termination of the voluntary agreement for extended foster care services and support; and

5. A statement that the program participant may appeal the denial or delay of any service identified in the case plan established pursuant to subsection D of § 63.2-919.

B. A program participant may terminate the voluntary agreement for extended foster care services and support and cease receiving services and support pursuant to such agreement at any time. Upon such termination, the local department shall provide the program participant with written notice informing the program participant of the consequences of terminating the agreement, his right to reenter the Program at any time prior to his reaching the age of 21 years if he continues to meet the eligibility criteria set forth in § 63.2-918, and the procedures for reentering the Program.

C. The local department shall terminate the voluntary agreement for extended foster care services and support and all services and support provided pursuant to the agreement if the local department determines that the program participant no longer meets the eligibility criteria set forth in § 63.2-918. Upon determining that a program participant is no longer eligible, the local department shall provide written notice to the program participant stating that the voluntary agreement and all services and support provided pursuant thereto will be terminated 30 days after the date of the notice. Such notice shall state the basis for the termination of the voluntary agreement and services and support provided pursuant thereto and shall include information about the program participant's right to enter into another voluntary agreement with the local department at such time as he meets the eligibility criteria set forth in § 63.2-918. Such notice shall also include information about and contact information for community resources that may benefit the program participant, specifically information regarding state programs established pursuant to 42 U.S.C. § 677.

D. A program participant shall not be found to be out of compliance with eligibility requirements set forth in § 63.2-918 during a period that is an academic break in postsecondary education, a period of transition between education and employment, or a transition between employment opportunities, provided such period is not longer than 30 days.

E. A program participant may appeal the termination of a voluntary agreement for extended foster care services and support provided pursuant to the voluntary agreement by a local department. Such appeals shall be made in accordance with § 63.2-915 and regulations of the Board.

§ 63.2-921. Review of voluntary agreements.

A. A local department that enters into a voluntary agreement for extended foster care services and support pursuant to § 63.2-920 shall file a petition for review of the agreement in accordance with § 16.1-283.3 with the juvenile and domestic relations district court having jurisdiction over the program participant's foster care case when the program participant was in the custody of the local board.

B. The local department shall conduct regular reviews of the case at least once every six months after the completion of the review pursuant to § 16.1-283.3 and at such other times as may be requested by the program participant, the local agency, or any other party to the proceeding and shall ensure that the program participant is receiving the necessary services and support to facilitate his transition to permanency and self-sufficiency. In conducting such reviews, the local department shall consult with the program participant in an age-appropriate manner regarding the proposed case plan, shall ensure that the program participant has a clear self-advocacy role in the process and is actively engaged in key decisions regarding the services and support, and shall comply with procedural requirements set forth in 42 U.S.C § 675(5)(C).

§ 63.2-1302. Adoption assistance payments; maintenance; special needs; payment agreements; continuation of payments when adoptive parents move to another jurisdiction; procedural

requirements.

A. Adoption assistance payments may include:

1. Title IV-E or state-funded maintenance payments that shall be payable monthly to provide for the support and care of the child; however, Title IV-E or state-funded maintenance payments shall not exceed the foster care payment that would otherwise be made for the child; and

2. State special services payments to provide special services to the child that the adoptive parents cannot afford and that are not covered by insurance or otherwise, including, but not limited to:

a. Medical, surgical and dental care;

b. Hospitalization;

c. Individual remedial educational services;

d. Psychological and psychiatric treatment;

e. Speech and physical therapy; and

f. Special services, equipment, treatment and training for physical and mental handicaps.

State special services payments may be paid to the vendor of the goods or services directly or to the adoptive parents.

B. Adoption assistance payments shall cease when the child with special needs reaches the age of 18 years. If it is determined that the child has a mental or physical handicap, or an educational delay resulting from such handicap, warranting the continuation of assistance, adoption assistance payments may be made until the child reaches the age of 21 years. *The local department shall provide continued adoption assistance until a child reaches 21 years of age for a child who was adopted after reaching 16 years of age and for whom adoption assistance payments are being made if the child meets the eligibility criteria set forth in subdivision A 3 of § 63.2-918.*

C. Adoption assistance payments shall be made on the basis of an adoption assistance agreement entered into by the local board and the adoptive parents or, in cases in which the child is in the custody of a licensed child-placing agency, an agreement between the local board, the licensed child-placing agency and the adoptive parents.

Prior to entering into an adoption assistance agreement, the local board or licensed child-placing agency shall ensure that adoptive parents have received information about their child's eligibility for adoption assistance; about their child's special needs and, to the extent possible, the current and potential impact of those special needs. The local board or licensed child-placing agency shall also ensure that adoptive parents receive information about the process for appeal in the event of a disagreement between the adoptive parent and the local board or the adoptive parent and the child-placing agency and information about the procedures for revising the adoption assistance agreement.

Adoptive parents shall submit annually to the local board within thirty days of the anniversary date of the approved agreement an affidavit which certifies that (i) the child on whose behalf they are receiving adoption assistance payments remains in their care, (ii) the child's condition requiring adoption assistance continues to exist, and (iii) whether or not changes to the adoption assistance agreement are requested.

Title IV-E and state-funded maintenance payments made pursuant to this section shall be changed only in accordance with the provisions of § 473 of Title IV-E of the Social Security Act (42 U.S.C. § 673).

D. Responsibility for adoption assistance payments for a child placed for adoption shall be continued by the local board that initiated the agreement in the event that the adoptive parents live in or move to another jurisdiction.

E. Payments may be made under this chapter from appropriations for foster care services for the maintenance and medical or other services for children who have special needs in accordance with § 63.2-1301. Within the limitations of the appropriations to the Department, the Commissioner shall reimburse any agency making payments under this chapter. Any such agency may seek and accept funds from other sources, including federal, state, local, and private sources, to carry out the purposes of this chapter.