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SENATE BILL NO. 876

Senate Amendments in [] — January 27, 2017

A BILL to amend and reenact §§ 63.2-100 and 63.2-905 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 13 of Title 63.2 a section numbered 63.2-1305, relating to Kinship Guardianship Assistance program.

Patrons Prior to Engrossment—Senator Favola; Delegates: Murphy and Peace

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-100 and 63.2-905 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 13 of Title 63.2 a section numbered 63.2-1305 as follows:

§ 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;

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; or

7. Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in the Trafficking Victims Protection Act of 2000, 22 U.S.C § 7102 et seq., and in the Justice for Victims of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.

If a civil proceeding under this title is based solely on the parent having left the child at a hospital or emergency medical services agency, 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 emergency medical services agency that employs emergency medical services providers, 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

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60 licensed child-placing agency for the placement of a child with the intent of adoption.

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

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

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

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

75 "Adult foster care" means room and board, supervision, and special services to an adult who has a
76 physical or mental condition. Adult foster care may be provided by a single provider for up to three
77 adults.

78 "Adult neglect" means that an adult is living under such circumstances that he is not able to provide
79 for himself or is not being provided services necessary to maintain his physical and mental health and
80 that the failure to receive such necessary services impairs or threatens to impair his well-being.
81 However, no adult shall be considered neglected solely on the basis that such adult is receiving religious
82 nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such
83 treatment or care is performed in good faith and in accordance with the religious practices of the adult
84 and there is a written or oral expression of consent by that adult.

85 "Adult protective services" means services provided by the local department that are necessary to
86 protect an adult from abuse, neglect or exploitation.

87 "Assisted living care" means a level of service provided by an assisted living facility for adults who
88 may have physical or mental impairments and require at least a moderate level of assistance with
89 activities of daily living.

90 "Assisted living facility" means any congregate residential setting that provides or coordinates
91 personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for
92 the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for
93 in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board
94 of Health or the Department of Behavioral Health and Developmental Services, but including any
95 portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or
96 maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility
97 serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational
98 program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the Department as
99 a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.), but including any portion of the
100 facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled
101 that provides no more than basic coordination of care services and is funded by the U.S. Department of
102 Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing
103 Development Authority. Included in this definition are any two or more places, establishments or
104 institutions owned or operated by a single entity and providing maintenance or care to a combined total
105 of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general
106 supervision and oversight of the physical and mental well-being of an aged, infirm or disabled
107 individual.

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

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

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

114 "Board" means the State Board of Social Services.

115 "Child" means any natural person under 18 years of age.

116 "Child day center" means a child day program offered to (i) two or more children under the age of
117 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or
118 more children at any location.

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

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

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

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

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

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

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

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

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

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

149 "Department" means the State Department of Social Services.

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

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

155 "Energy assistance" means benefits to assist low-income households with their home heating and
156 cooling needs, including, but not limited to, purchase of materials or substances used for home heating,
157 repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or
158 repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance
159 with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the
160 Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

161 "Family day home" means a child day program offered in the residence of the provider or the home
162 of any of the children in care for one through 12 children under the age of 13, exclusive of the
163 provider's own children and any children who reside in the home, when at least one child receives care
164 for compensation. The provider of a licensed or registered family day home shall disclose to the parents
165 or guardians of children in their care the percentage of time per week that persons other than the
166 provider will care for the children. Family day homes serving five through 12 children, exclusive of the
167 provider's own children and any children who reside in the home, shall be licensed. However, no family
168 day home shall care for more than four children under the age of two, including the provider's own
169 children and any children who reside in the home, unless the family day home is licensed or voluntarily
170 registered. However, a family day home where the children in care are all related to the provider by
171 blood or marriage shall not be required to be licensed.

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

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

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

183 "General relief" means money payments and other forms of relief made to those persons mentioned
184 in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with
185 § 63.2-401.

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

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

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

199 "Independent living services" means services and activities provided to a child in foster care 14 years
200 of age or older who was committed or entrusted to a local board of social services, child welfare
201 agency, or private child-placing agency. "Independent living services" may also mean services and
202 activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached
203 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
204 who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of
205 a local board of social services. Such services shall include counseling, education, housing, employment,
206 and money management skills development, access to essential documents, and other appropriate
207 services to help children or persons prepare for self-sufficiency.

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

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

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

220 "Kinship care" means the full-time care, nurturing, and protection of children by relatives.

221 "*Kinship guardian*" means the adult relative of a child in a kinship guardianship established in
222 accordance with § 63.2-1305 who has been awarded custody of the child by the court after acting as the
223 child's foster parent.

224 "*Kinship guardianship*" means a relationship established in accordance with § 63.2-1305 between a
225 child and an adult relative of the child who has formerly acted as the child's foster parent that is
226 intended to be permanent and self-sustaining as evidenced by the transfer by the court to the adult
227 relative of the child of the authority necessary to ensure the protection, education, care and control, and
228 custody of the child and the authority for decision making for the child.

229 "*Kinship Guardianship Assistance program*" means a program consistent with 42 U.S.C § 673 that
230 provides, subject to a kinship guardianship assistance agreement developed in accordance with
231 § 63.2-1305, payments to eligible individuals who have received custody of a relative child of whom they
232 had been the foster parents.

233 "Local board" means the local board of social services representing one or more counties or cities.

234 "Local department" means the local department of social services of any county or city in this
235 Commonwealth.

236 "Local director" means the director or his designated representative of the local department of the
237 city or county.

238 "Merit system plan" means those regulations adopted by the Board in the development and operation
239 of a system of personnel administration meeting requirements of the federal Office of Personnel
240 Management.

241 "Parental placement" means locating or effecting the placement of a child or the placing of a child in
242 a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

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

245 care; and general relief.

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

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

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

259 "Sibling" means each of two or more children having one or more parents in common.

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

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

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

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

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

279 **§ 63.2-905. Foster care services.**

280 Foster care services are the provision of a full range of casework, treatment and community services,
281 including but not limited to independent living services, for a planned period of time to a child who is
282 abused or neglected as defined in § 63.2-100 or in need of services as defined in § 16.1-228 and his
283 family when the child (i) has been identified as needing services to prevent or eliminate the need for
284 foster care placement, (ii) has been placed through an agreement between the local board or the public
285 agency designated by the community policy and management team and the parents or guardians where
286 legal custody remains with the parents or guardians, or (iii) has been committed or entrusted to a local
287 board or licensed child placing agency, or (iv) is currently committed or entrusted to a local board or
288 licensed child-placing agency, has lived with a relative custodian for at least six months, and meets the
289 requirements to participate in the Kinship Guardianship Assistance program set forth in § 63.2-1305.
290 Foster care services also include the provision and restoration of independent living services to a person
291 who is over the age of 18 years but who has not yet reached the age of 21 years, in accordance with
292 § 63.2-905.1.

293 **§ 63.2-1305. Kinship Guardianship Assistance program.**

294 A. *The Kinship Guardianship Assistance program is established to facilitate placements with relatives*
295 *and ensure permanency for children for whom adoption or being returned home are not appropriate*
296 *permanency options. Kinship guardianship assistance may include Title IV-E maintenance payments,*
297 *state-funded maintenance payments, state special services payments, and nonrecurring expense payments*
298 *made pursuant to this section.*

299 B. *A child is eligible for kinship guardianship assistance under the program if:*

300 1. *The child has been removed from his home pursuant to a voluntary placement agreement or as a*
301 *result of a judicial determination that continuation in the home would be contrary to the welfare of the*
302 *child;*

303 2. *The child was eligible for foster care maintenance payments under 42 U.S.C. § 672 or under state*
304 *law while residing for at least six consecutive months in the home of the prospective kinship guardian;*

305 3. *Being returned home or adopted is not an appropriate permanency option for the child;*

306 4. The child demonstrates a strong attachment to the prospective kinship guardian, and the
307 prospective kinship guardian has a strong commitment to caring permanently for the child; and

308 5. The child has been consulted regarding the kinship guardianship if the child is 14 years of age or
309 older.

310 If a child meets these criteria but has a sibling who does not meet the criteria, such sibling may be
311 placed in the same kinship guardianship, in accordance with 42 U.S.C. § 671(a)(31), if the local
312 department and kinship guardian agree that such placement is appropriate. In such cases, kinship
313 guardianship assistance may be paid on behalf of each sibling so placed.

314 C. In order to receive payments under 42 U.S.C. § 674(a)(5) or pursuant to the Children's Services
315 Act (§ 2.2-5200 et seq.), the local department and the prospective kinship guardian of a child who meets
316 the requirements of subsection B shall enter into a kinship guardianship assistance agreement
317 containing terms providing for the following:

318 1. The amount of, and the manner in which, each kinship guardianship assistance payment will be
319 provided and the manner in which such payment may be adjusted periodically, in consultation with the
320 kinship guardian, on the basis of the circumstances of the kinship guardian and the needs of the child;

321 2. The additional services or assistance, if any, for which the child and kinship guardian will be
322 eligible under the agreement;

323 3. The procedure by which the kinship guardian may apply for additional services as needed;

324 4. Subject to 42 U.S.C. § 673(d)(1)(D), assurance that the local department shall pay the total cost
325 of nonrecurring expenses associated with obtaining kinship guardianship of the child, to the extent that
326 the total cost does not exceed \$2,000; and

327 5. Assurance that the agreement shall remain in effect without regard to the state of residency of the
328 kinship guardian.

329 D. A kinship guardianship assistance payment on behalf of a child pursuant to this section shall not
330 exceed the foster care maintenance payment that would have been paid on behalf of the child had the
331 child remained in a foster family home.

332 E. The Board shall promulgate regulations for the Kinship Guardianship Assistance program that
333 are necessary to comply with Title IV-E requirements, including those set forth in 42 U.S.C. § 673. The
334 regulations may set forth qualifications for kinship guardians, the conditions under which a kinship
335 guardianship may be established, the requirements for the development and amendment of a kinship
336 guardianship assistance agreement, and the manner of payments on behalf of siblings placed in the
337 same household.

338 [2. That the provisions of this act shall not become effective unless an appropriation effectuating
339 the purposes of this act is included in a general appropriation act passed in 2017 by the General
340 Assembly that becomes law.]