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SENATE BILL NO. 35

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on February 6, 2004)

(Patron Prior to Substitute—Senator Miller)

A BILL to amend and reenact § 63.2-100 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 9 of Title 63.2 a section numbered 63.2-913, relating to subsidized custody for children.

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-100 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 63.2-913 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;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law; or

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis.

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

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

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

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

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

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

"Adult neglect" means that an adult is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being.

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

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

"Assisted living facility" means any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board

60 of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but
61 including any portion of such facility not so licensed; (ii) the home or residence of an individual who
62 cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a
63 facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an
64 educational program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the
65 Department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of this title, but
66 including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of
67 age or older or the disabled that provides no more than basic coordination of care services and is funded
68 by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or
69 by the Virginia Housing Development Authority. Included in this definition are any two or more places,
70 establishments or institutions owned or operated by a single entity and providing maintenance or care to
71 a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the
72 protection, general supervision and oversight of the physical and mental well-being of an
73 aged, infirm or disabled individual.

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

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

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

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

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

82 "Child day center" means a child day program offered to (i) two or more children under the age of
83 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or
84 more children at any location.

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

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

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

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

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

103 "Children's residential facility" means any facility, child-caring institution, or group home that is
104 maintained for the purpose of receiving children separated from their parents or guardians for full-time
105 care, maintenance, protection and guidance, except:

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

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

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

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

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

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

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

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

repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

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

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

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board or the public agency designated by the community policy and management team where legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency.

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

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

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

"Independent living" means a program of services and activities for children in foster care who are 16 years of age or older, and persons who are former foster care children between the ages of 18 and 21, that prepares them for the successful transition from foster care to self sufficiency.

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

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

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

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

"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

183 Management.

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

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

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

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

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

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

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

208 "*Subsidized custody*" means a program of financial assistance and services for children in foster care
209 who are placed with relatives other than the natural parent and legal custody is subsequently
210 transferred to the relative.

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

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

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

221 § 63.2-913. *Subsidized custody.*

222 A. *The Department shall establish a subsidized custody program for the benefit of children in the*
223 *custody of a local board on or after July 1, 2004, who are living with relative caregivers other than a*
224 *natural parent and for whom reunification with his natural parents and adoption by the relative are*
225 *eliminated. A "relative caregiver" means a person who is caring for a child related to such person*
226 *where the option of the child's reunification with his natural parents and adoption by the relative are*
227 *eliminated. A relative caregiver may obtain legal custody over such child and receive a custody subsidy*
228 *from the local department. If adoption of the child by the relative caregiver is an option, the local*
229 *department shall counsel the relative caregiver about the advantages and disadvantages of adoption and*
230 *subsidized custody so that the decision by the relative caregiver to request a subsidized custody payment*
231 *is a fully informed one.*

232 B. *Within the limitations of federal funding and the subsidized custody appropriation to the*
233 *Department, the subsidized custody program shall provide the following subsidies for the benefit of any*
234 *child in the care of a relative caregiver who has been appointed the legal custodian of the child*
235 *pursuant to court order:*

236 1. *A special-need subsidy, which shall be a one-time lump sum payment for expenses resulting from*
237 *the assumption of care of the child when no other resource is available to pay for such expense;*

238 2. *A comprehensive range of services and supports for the child, including but not limited to,*
239 *short-term casework, information and referral, and crisis intervention; and*

240 3. *A monthly subsidy on behalf of the child payable to the relative caregiver that shall be equal to*
241 *the prevailing foster care rate.*

242 *The Department may establish an asset test for eligibility under the program.*

243 C. *Prior to the custody hearing and as a prerequisite for payment of a custody subsidy for the*
244 *benefit of a minor child, a home study report on the relative caregiver shall be filed with the court*

having jurisdiction over the child's case provided that no such report shall be required to be filed if a current report has previously been provided to the court.

D. The subsidized custody payment shall continue until the child reaches the age of 18 or the age of 21 if such child is in full-time attendance at a secondary school, career and technical school, or college or is in a state-accredited job training program. The relative caregiver receiving a custody subsidy shall submit annually to the local department a sworn statement that the child is still living with and receiving support from the relative. The parent of any child receiving assistance through the subsidized custody program shall remain liable for the support of the child.

E. A subsidized custody payment shall not be included in the calculation of household income in determining eligibility for benefits of the relative caregiver of the subsidized child or other persons living within the household of the relative caregiver.

2. That the State Board of Social Services shall promulgate regulations to implement the provisions of this act within 280 days of the enactment of this provision.

3. That the Department of Social Services shall seek all federal waivers as are necessary and appropriate to implement this act.

4. That the provisions of this act shall not become effective unless federal funds are made available through a federal Title IV-E waiver and an appropriation of funds effectuating the purposes of this act is included in the general appropriation act for the period July 1, 2004, through June 30, 2006, passed during the 2004 Session of the General Assembly and signed into law by the Governor.