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SENATE BILL NO. 863

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services  
on January 25, 2013)

(Patron Prior to Substitute—Senator Favola)

A BILL to amend and reenact §§ 16.1-293, 63.2-100 as it shall become effective, and 63.2-905.1 of the Code of Virginia, relating to foster children committed to the Department of Juvenile Justice; independent living services.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-293, 63.2-100 as it shall become effective, and 63.2-905.1 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-293. Supervision of juvenile or person during commitment and on parole; placing juvenile in halfway house.

At such time as the court commits a juvenile to the Department, the juvenile and domestic relations district court service unit shall maintain contact with the juvenile during the juvenile's commitment.

If a person is placed on parole supervision following that person's release from commitment to the Department, the court services unit providing parole supervision shall furnish the person a written statement of the conditions of his parole and shall instruct him regarding the same. The conditions of the reenrollment plan may be included in the conditions of parole. Violations of parole shall be heard by the court pursuant to § 16.1-291. If the parole supervision is for an indeterminate period of time, the director of the supervising court services unit may approve termination of parole supervision.

The Department shall notify the school division superintendent in the locality where the person was enrolled of his commitment to a facility. The court services unit shall, in consultation with the local school division, the Department's Division of Education and the juvenile correctional counselor, develop a reenrollment plan if the person is of compulsory school attendance age or is eligible for special education services pursuant to § 22.1-213. The reenrollment plan shall be in accordance with regulations adopted by the Board of Education pursuant to § 22.1-17.1. The superintendent shall provide the person's scholastic records, as defined in § 22.1-289, and the terms and conditions of any expulsion which was in effect at the time of commitment or which will be in effect upon release. A court may not order a local school board to reenroll a person who has been expelled in accordance with the procedures set forth in § 22.1-277.06. At least 14 days prior to the person's scheduled release, the Department shall notify the school division superintendent in the locality where the person will reside.

In the event it is determined by the juvenile and domestic relations district court that a person may benefit from placement in the halfway house program operated by the Department, the person may be referred for care and treatment to a halfway house. Persons so placed in a halfway house shall remain in parole status and cannot be transferred or otherwise placed in another institutional setting or institutional placement operated by the Department except as elsewhere provided by law for those persons who have violated their parole status.

In the event that the person was in the custody of the local department of social services immediately prior to his commitment to the Department and has not attained the age of 18 years, the local department of social services shall resume custody upon the person's release from commitment, unless an alternative arrangement for the custody of the person has been made and communicated in writing to the Department. At least 90 days prior to the person's release from commitment on parole supervision, (i) the court services unit shall consult with the local department of social services concerning return of the person to the locality and the placement of the person and (ii) the local department of social services and the court services unit shall collaborate to develop a plan that prepares the person for successful transition from the Department's commitment to the custody of the local department of social services or to an alternative custody arrangement if applicable. The plan shall identify the services necessary for such transition and how the services are to be provided. The court services unit will be responsible for supervising the person's terms and conditions of parole.

In the event that the person was in the custody of the local department of social services immediately prior to his commitment to the Department, is between 18 and 21 years of age, provides written notice of his intent to receive independent living services to the local department of social services, and enters into a written agreement with the local department of social services as set forth in § 63.2-905.1, the person shall be eligible to receive independent living services from the local department or a child-placing agency pursuant to § 63.2-905.1. At least 90 days prior to the person's release from commitment on parole supervision, (i) the court services unit shall inform the person of the availability of independent living services and shall consult with the local department of social services concerning return of the person to the locality and living arrangements for the person and (ii) the local department

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60 of social services and the court services unit shall work collaboratively to develop a plan for the  
61 successful transition of the person from the custody of the Department to independent living, which shall  
62 identify the services necessary to facilitate the person's transition to independent living and describe  
63 how the necessary services shall be provided.

64 In all cases in which a person who is in the custody of the local department of social services is  
65 committed to the Department, the local department of social services and the Department shall work  
66 cooperatively through the duration of the person's commitment to ensure communication of information  
67 regarding the status of the person and to facilitate transition planning for the person prior to his  
68 release.

69 **§ 63.2-100. (Effective July 1, 2013) Definitions.**

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

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

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

80 2. Whose parents or other person responsible for his care neglects or refuses to provide care  
81 necessary for his health. However, no child who in good faith is under treatment solely by spiritual  
82 means through prayer in accordance with the tenets and practices of a recognized church or religious  
83 denomination shall for that reason alone be considered to be an abused or neglected child. Further, a  
84 decision by parents who have legal authority for the child or, in the absence of parents with legal  
85 authority for the child, any person with legal authority for the child, who refuses a particular medical  
86 treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary  
87 care if (i) such decision is made jointly by the parents or other person with legal authority and the child;  
88 (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the  
89 subject of his medical treatment; (iii) the parents or other person with legal authority and the child have  
90 considered alternative treatment options; and (iv) the parents or other person with legal authority and the  
91 child believe in good faith that such decision is in the child's best interest. Nothing in this subdivision  
92 shall be construed to limit the provisions of § 16.1-278.4;

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

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

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

99 6. Whose parents or other person responsible for his care creates a substantial risk of physical or  
100 mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as  
101 defined in § 55-79.2, with a person to whom the child is not related by blood or marriage and who the  
102 parent or other person responsible for his care knows has been convicted of an offense against a minor  
103 for which registration is required as a violent sexual offender pursuant to § 9.1-902.

104 If a civil proceeding under this title is based solely on the parent having left the child at a hospital  
105 or rescue squad, it shall be an affirmative defense that such parent safely delivered the child to a  
106 hospital that provides 24-hour emergency services or to an attended rescue squad that employs  
107 emergency medical technicians, within 14 days of the child's birth. For purposes of terminating parental  
108 rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected  
109 child upon the ground of abandonment.

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

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

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

116 "Adult day care center" means any facility that is either operated for profit or that desires licensure  
117 and that provides supplementary care and protection during only a part of the day to four or more aged,  
118 infirm or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by  
119 the State Board of Health or the Department of Behavioral Health and Developmental Services, and (ii)  
120 the home or residence of an individual who cares for only persons related to him by blood or marriage.  
121 Included in this definition are any two or more places, establishments or institutions owned, operated or

122 controlled by a single entity and providing such supplementary care and protection to a combined total  
123 of four or more aged, infirm or disabled adults.

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

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

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

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

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

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

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

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

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

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

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

167 "Child day center" means a child day program offered to (i) two or more children under the age of  
168 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or  
169 more children at any location.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

234 "General relief" means money payments and other forms of relief made to those persons mentioned  
235 in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with  
236 § 63.2-401.

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

243 "Independent living" means a planned program of services designed to assist a child age 16 and over  
244 and persons who are former foster care children between the ages of 18 and 21 in transitioning from

245 foster care to self-sufficiency.

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

250 "Independent living services" means services and activities provided to a child in foster care 14 years  
251 of age or older who was committed or entrusted to a local board of social services, child welfare  
252 agency, or private child-placing agency. "Independent living services" may also mean services and  
253 activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached  
254 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  
255 who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a  
256 local board of social services. Such services shall include counseling, education, housing, employment,  
257 and money management skills development, access to essential documents, and other appropriate  
258 services to help children or persons prepare for self-sufficiency.

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

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

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

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

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

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

275 "Local director" means the director or his designated representative of the local department of the  
276 city or county.

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

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

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

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

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

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

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

304 "Special order" means an order imposing an administrative sanction issued to any party licensed  
305 pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A

306 special order shall be considered a case decision as defined in § 2.2-4001.

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

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

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

317 **§ 63.2-905.1. Independent living services.**

318 Local departments and licensed child-placing agencies may provide independent living services to  
319 any person between 18 and 21 years of age who is in the process of transitioning from foster care to  
320 self-sufficiency. Any person who was committed or entrusted to a local board or licensed child-placing  
321 agency may choose to discontinue receiving independent living services any time before his twenty-first  
322 birthday in accordance with regulations adopted by the Board. The local board or licensed child-placing  
323 agency shall restore independent living services at the request of that person provided that (i) the person  
324 has not yet reached 21 years of age and (ii) the person has entered into a written agreement, less than  
325 60 days after independent living services have been discontinued, with the local board or licensed  
326 child-placing agency regarding the terms and conditions of his receipt of independent living services.

327 *Local departments and licensed child-placing agencies may provide independent living services to*  
328 *any person between 18 and 21 years of age who (a) was in the custody of the local department of*  
329 *social services immediately prior to his commitment to the Department of Juvenile Justice, (b) is in the*  
330 *process of transitioning from a commitment to the Department of Juvenile Justice to self-sufficiency, and*  
331 *(c) provides written notice of his intent to receive independent living services and enters into a written*  
332 *agreement for the provision of independent living services, which sets forth the terms and conditions of*  
333 *the provision of independent living services, with the local board or licensed child-placing agency within*  
334 *60 days of his release from commitment to the Department of Juvenile Justice.*

335 Local departments that provide independent living services to persons between 18 and 21 years of  
336 age shall provide any person who chooses to leave foster care or terminate independent living services  
337 before his twenty-first birthday written notice of his right to request restoration of independent living  
338 services in accordance with this section by including such written notice in the person's transition plan.  
339 Such transition plan shall be created at least 90 days prior to the person's discharge from foster care.  
340 Local departments and licensed child-placing agencies may provide independent living services as part  
341 of the foster care services provided to any child 14 years of age or older. All independent living services  
342 shall be provided in accordance with regulations adopted by the ~~board~~ Board.