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## HOUSE BILL NO. 2162

Offered January 9, 2019

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A BILL to amend and reenact §§ 63.2-900.1, 63.2-1503, 63.2-1504, and 63.2-1506 of the Code of Virginia, relating to kinship foster care; notice; family assessments.

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Patron—Carroll Foy

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Referred to Committee for Courts of Justice

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

1. That §§ 63.2-900.1, 63.2-1503, 63.2-1504, and 63.2-1506 of the Code of Virginia are amended and reenacted as follows:

**§ 63.2-900.1. Kinship foster care.**

A. The local board shall, in accordance with regulations adopted by the Board, determine whether the child has a ~~relative~~ any relatives who ~~is~~ may be eligible to become a kinship foster parent. *The local board shall provide notice to such relatives of their potential eligibility to become a kinship foster parent and explain any opportunities such relatives may have to participate in the placement and care of the child, including opportunities available through kinship foster care or kinship guardianship.*

B. Kinship foster care placements pursuant to this section shall be subject to all requirements of, and shall be eligible for all services related to, foster care placement contained in this chapter. Subject to approval by the Commissioner, a local board may grant a waiver of the Board's standards for foster home approval, set forth in regulations, that are not related to safety. Waivers granted pursuant to this subsection shall be considered and, if appropriate, granted on a case-by-case basis and shall include consideration of the unique needs of each child to be placed. Upon request by a local board, the Commissioner shall review the local board's decision and reasoning to grant a waiver and shall verify that the foster home approval standard being waived is not related to safety. The approval or disapproval by the Commissioner of the local board's waiver shall not be considered a case decision as defined in § 2.2-4001.

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

D. A child placed in kinship foster care pursuant to this section shall not be removed from the physical custody of the kinship foster parent, provided *that* the child has been living with the kinship foster parent for six consecutive months and the placement continues to meet approval standards for foster care, unless (i) the kinship foster parent consents to the removal; (ii) removal is agreed upon at a family partnership meeting as defined by the Department; (iii) removal is ordered by a court of competent jurisdiction; or (iv) removal is warranted pursuant to § 63.2-1517.

**§ 63.2-1503. Local departments to establish child-protective services; duties.**

A. Each local department shall establish child-protective services under a departmental coordinator within such department or with one or more adjacent local departments that shall be staffed with qualified personnel pursuant to regulations adopted by the Board. The local department shall be the public agency responsible for receiving and responding to complaints and reports, except that (i) in cases where the reports or complaints are to be made to the court and the judge determines that no local department within a reasonable geographic distance can impartially respond to the report, the court shall assign the report to the court services unit for evaluation; and (ii) in cases where an employee at a private or state-operated hospital, institution or other facility, or an employee of a school board is suspected of abusing or neglecting a child in such hospital, institution or other facility, or public school, the local department shall request the Department and the relevant private or state-operated hospital, institution or other facility, or school board to assist in conducting a joint investigation in accordance with regulations adopted by the Board, in consultation with the Departments of Education, Health, Medical Assistance Services, Behavioral Health and Developmental Services, Juvenile Justice and Corrections.

B. The local department shall ensure, through its own personnel or through cooperative arrangements with other local agencies, the capability of receiving reports or complaints and responding to them promptly on a 24-hours-a-day, seven-days-per-week basis.

C. The local department shall widely publicize a telephone number for receiving complaints and reports.

D. The local department shall notify the local attorney for the Commonwealth and the local law-enforcement agency of all complaints of suspected child abuse or neglect involving (i) any death of

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59 a child; (ii) any injury or threatened injury to the child in which a felony or Class 1 misdemeanor is  
60 also suspected; (iii) any sexual abuse, suspected sexual abuse or other sexual offense involving a child,  
61 including but not limited to the use or display of the child in sexually explicit visual material, as defined  
62 in § 18.2-374.1; (iv) any abduction of a child; (v) any felony or Class 1 misdemeanor drug offense  
63 involving a child; or (vi) contributing to the delinquency of a minor in violation of § 18.2-371,  
64 immediately, but in no case more than two hours of receipt of the complaint, and shall provide the  
65 attorney for the Commonwealth and the local law-enforcement agency with records and information of  
66 the local department, including records related to any complaints of abuse or neglect involving the  
67 victim or the alleged perpetrator, related to the investigation of the complaint. The local department shall  
68 notify the local attorney for the Commonwealth of all complaints of suspected child abuse or neglect  
69 involving the child's being left alone in the same dwelling with a person to whom the child is not  
70 related by blood or marriage and who has been convicted of an offense against a minor for which  
71 registration is required as a violent sexual offender pursuant to § 9.1-902, immediately, but in no case  
72 more than two hours of receipt of the complaint, and shall provide the attorney for the Commonwealth  
73 with records and information of the local department that would help determine whether a violation of  
74 post-release conditions, probation, parole, or court order has occurred due to the nonrelative sexual  
75 offender's contact with the child. The local department shall not allow reports of the death of the victim  
76 from other local agencies to substitute for direct reports to the attorney for the Commonwealth and the  
77 local law-enforcement agency. The local department shall develop, when practicable, memoranda of  
78 understanding for responding to reports of child abuse and neglect with local law enforcement and the  
79 attorney for the Commonwealth.

80 In each case in which the local department notifies the local law-enforcement agency of a complaint  
81 pursuant to this subsection, the local department shall, within two business days of delivery of the  
82 notification, complete a written report, on a form provided by the Board for such purpose, which shall  
83 include (a) the name of the representative of the local department providing notice required by this  
84 subsection; (b) the name of the local law-enforcement officer who received such notice; (c) the date and  
85 time that notification was made; (d) the identity of the victim; (e) the identity of the person alleged to  
86 have abused or neglected the child, if known; (f) the clause or clauses in this subsection that describe  
87 the reasons for the notification; and (g) the signatures, which may be electronic signatures, of the  
88 representatives of the local department making the notification and the local law-enforcement officer  
89 receiving the notification. Such report shall be included in the record of the investigation and may be  
90 submitted either in writing or electronically.

91 E. When abuse or neglect is suspected in any case involving the death of a child, the local  
92 department shall report the case immediately to the regional medical examiner and the local  
93 law-enforcement agency.

94 F. The local department shall use reasonable diligence to locate (i) any child for whom a report of  
95 suspected abuse or neglect has been received and is under investigation, receiving family assessment, or  
96 for whom a founded determination of abuse and neglect has been made and a child-protective services  
97 case opened and (ii) persons who are the subject of a report that is under investigation or receiving  
98 family assessment, if the whereabouts of the child or such persons are unknown to the local department.

99 G. When an abused or neglected child and the persons who are the subject of an open  
100 child-protective services case have relocated out of the jurisdiction of the local department, the local  
101 department shall notify the child-protective services agency in the jurisdiction to which such persons  
102 have relocated, whether inside or outside of the Commonwealth, and forward to such agency relevant  
103 portions of the case record. The receiving local department shall arrange protective and rehabilitative  
104 services as required by this section.

105 H. When a child for whom a report of suspected abuse or neglect has been received and is under  
106 investigation or receiving family assessment and the child and the child's parents or other persons  
107 responsible for the child's care who are the subject of the report that is under investigation or family  
108 assessment have relocated out of the jurisdiction of the local department, the local department shall  
109 notify the child-protective services agency in the jurisdiction to which the child and such persons have  
110 relocated, whether inside or outside of the Commonwealth, and complete such investigation or family  
111 assessment by requesting such agency's assistance in completing the investigation or family assessment.  
112 The local department that completes the investigation or family assessment shall forward to the receiving  
113 agency relevant portions of the case record in order for the receiving agency to arrange protective and  
114 rehabilitative services as required by this section.

115 I. Upon receipt of a report of child abuse or neglect, the local department shall determine the validity  
116 of such report and shall make a determination to conduct an investigation pursuant to § 63.2-1505 or, if  
117 designated as a child-protective services differential response agency by the Department according to §-  
118 63.2-1504, a family assessment pursuant to § 63.2-1506.

119 J. The local department shall foster, when practicable, the creation, maintenance and coordination of  
120 hospital and community-based multidisciplinary teams that shall include where possible, but not be

limited to, members of the medical, mental health, social work, nursing, education, legal and law-enforcement professions. Such teams shall assist the local departments in identifying abused and neglected children; coordinating medical, social, and legal services for the children and their families; developing innovative programs for detection and prevention of child abuse; promoting community concern and action in the area of child abuse and neglect; and disseminating information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat child abuse and neglect. These teams may be the family assessment and planning teams established pursuant to § 2.2-5207. Multidisciplinary teams may develop agreements regarding the exchange of information among the parties for the purposes of the investigation and disposition of complaints of child abuse and neglect, delivery of services and child protection. Any information exchanged in accordance with the agreement shall not be considered to be a violation of the provisions of § 63.2-102, 63.2-104, or 63.2-105.

The local department shall also coordinate its efforts in the provision of these services for abused and neglected children with the judge and staff of the court.

K. The local department may develop multidisciplinary teams to provide consultation to the local department during the investigation of selected cases involving child abuse or neglect, and to make recommendations regarding the prosecution of such cases. These teams may include, but are not limited to, members of the medical, mental health, legal and law-enforcement professions, including the attorney for the Commonwealth or his designee; a local child-protective services representative; and the guardian ad litem or other court-appointed advocate for the child. Any information exchanged for the purpose of such consultation shall not be considered a violation of § 63.2-102, 63.2-104, or 63.2-105.

L. The local department shall report annually on its activities concerning abused and neglected children to the court and to the Child-Protective Services Unit in the Department on forms provided by the Department.

M. Statements, or any evidence derived therefrom, made to local department child-protective services personnel, or to any person performing the duties of such personnel, by any person accused of the abuse, injury, neglect or death of a child after the arrest of such person, shall not be used in evidence in the case-in-chief against such person in the criminal proceeding on the question of guilt or innocence over the objection of the accused, unless the statement was made after such person was fully advised (i) of his right to remain silent, (ii) that anything he says may be used against him in a court of law, (iii) that he has a right to the presence of an attorney during any interviews, and (iv) that if he cannot afford an attorney, one will be appointed for him prior to any questioning.

N. Notwithstanding any other provision of law, the local department, in accordance with Board regulations, shall transmit information regarding reports, complaints, family assessments, and investigations involving children of active duty members of the United States Armed Forces or members of their household to family advocacy representatives of the United States Armed Forces.

O. The local department shall notify the custodial parent and make reasonable efforts to notify the noncustodial parent as those terms are defined in § 63.2-1900 of a report of suspected abuse or neglect of a child who is the subject of an investigation or is receiving family assessment, in those cases in which such custodial or noncustodial parent is not the subject of the investigation.

P. The local department shall (i) notify the Superintendent of Public Instruction without delay when an individual holding a license issued by the Board of Education is the subject of a founded complaint of child abuse or neglect and shall transmit identifying information regarding such individual if the local department knows the person holds a license issued by the Board of Education and (ii) notify the Superintendent of Public Instruction without delay if the founded complaint of child abuse or neglect is dismissed following an appeal pursuant to § 63.2-1526. Nothing in this subsection shall be construed to affect the rights of any individual holding a license issued by the Board of Education to any hearings or appeals otherwise provided by law. Any information exchanged for the purpose of this subsection shall not be considered a violation of § 63.2-102, 63.2-104, or 63.2-105.

**§ 63.2-1504. Child-protective services differential response system.**

The Department shall implement a child-protective services differential response system in all local departments. The differential response system allows local departments to respond to valid reports or complaints of child abuse or neglect by conducting either an investigation or a family assessment. The Department shall publish a plan to implement the child-protective services differential response system in local departments by July 1, 2000, and complete implementation in all local departments by July 1, 2003. The Department shall develop a training program for all staff persons involved in the differential response system, and all such staff shall receive this training.

**§ 63.2-1506. Family assessments by local departments.**

A. A family assessment requires the collection of information necessary to determine:

1. The immediate safety needs of the child;
2. The protective and rehabilitative services needs of the child and family that will deter abuse or

182 neglect;

183 3. Risk of future harm to the child;

184 4. Whether the mother of a child who was exposed in utero to a controlled substance sought  
185 substance abuse counseling or treatment prior to the child's birth; and

186 5. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the  
187 family is unable or unwilling to participate in services.

188 B. When a local department has been designated as a child-protective services differential response  
189 system participant by the Department pursuant to § 63.2-1504 and responds to the report or complaint  
190 by conducting a family assessment, the local department shall:

191 1. Conduct an immediate family assessment and, if the report or complaint was based upon one of  
192 the factors specified in subsection B of § 63.2-1509, the local department may file a petition pursuant  
193 to § 16.1-241.3;

194 2. Immediately contact the subject of the report and the family of the child alleged to have been  
195 abused or neglected and give each a written and an oral explanation of the family assessment procedure.  
196 The family assessment shall be in writing and shall be completed in accordance with Board regulation;

197 3. Complete the family assessment within 45 days and transmit a report to such effect to the  
198 Department and to the person who is the subject of the family assessment. However, upon written  
199 justification by the local department, the family assessment may be extended, not to exceed a total of 60  
200 days;

201 4. Consult with the family to arrange for necessary protective and rehabilitative services to be  
202 provided to the child and his family. Families have the option of declining the services offered as a  
203 result of the family assessment. If the family declines the services, the case shall be closed unless the  
204 local department determines that sufficient cause exists to redetermine the case as one that needs to be  
205 investigated. In no instance shall a case be redetermined as an investigation solely because the family  
206 declines services;

207 5. *If the family of the child alleged to have been abused or neglected agrees to a safety plan that*  
208 *includes a temporary diversion of the child to the care of a relative for a period longer than 60 days,*  
209 *file a motion with the court for a preliminary protective order pursuant to § 16.1-253. Such motion shall*  
210 *request visitation privileges for persons entitled thereto, as appropriate, and specify the terms of the*  
211 *safety plan and the length of time the child shall remain with the relative, not to exceed 180 days. If*  
212 *after 180 days following the child's placement with the relative, the local department determines that it*  
213 *is not in the child's best interest to return home, the local department shall petition the court for*  
214 *services deemed necessary pursuant to subdivision 6, which may include the removal of the child or his*  
215 *siblings from the home or the transfer of custody of the child or his siblings to the relative with whom*  
216 *the child resided pursuant to the temporary diversion. If the local department files a petition for*  
217 *removal, a family partnership meeting shall be held (i) prior to the preliminary removal hearing held*  
218 *pursuant to § 16.1-252; (ii) within 30 days of the child or his siblings entering foster care, but prior to*  
219 *the dispositional hearing held pursuant to § 16.1-278.2; and (iii) prior to any subsequent motions to the*  
220 *court to change the permanent plan goal for the child or his siblings. Prior to all family partnership*  
221 *meetings, the local department shall make diligent efforts, and document such efforts, to locate all adult*  
222 *relatives of the child or his siblings and invite such relatives to participate in the family partnership*  
223 *meeting;*

224 6. Petition the court for services deemed necessary;

225 ~~6.~~ 7. Make no disposition of founded or unfounded for reports in which a family assessment is  
226 completed. Reports in which a family assessment is completed shall not be entered into the central  
227 registry contained in § 63.2-1515; and

228 ~~7.~~ 8. Commence an immediate investigation, if at any time during the completion of the family  
229 assessment, the local department determines that an investigation is required.

230 C. When a local department has been designated as a child-protective services differential response  
231 agency by the Department, the local department may investigate any report of child abuse or  
232 neglect, but the following valid reports of child abuse or neglect shall be investigated: (i) sexual abuse,  
233 (ii) child fatality, (iii) abuse or neglect resulting in serious injury as defined in § 18.2-371.1, (iv) cases  
234 involving a child's being left alone in the same dwelling with a person to whom the child is not related  
235 by blood or marriage and who has been convicted of an offense against a minor for which registration is  
236 required as a violent sexual offender pursuant to § 9.1-902, (v) child has been taken into the custody of  
237 the local department, or (vi) cases involving a caretaker at a state-licensed child day center, religiously  
238 exempt child day center, licensed, registered or approved family day home, private or public school,  
239 hospital or any institution. If a report or complaint is based upon one of the factors specified in  
240 subsection B of § 63.2-1509, the local department shall (a) conduct a family assessment, unless an  
241 investigation is required pursuant to this subsection or other provision of law or is necessary to protect  
242 the safety of the child, and (b) develop a plan of safe care in accordance with federal law, regardless of  
243 whether the local department makes a finding of abuse or neglect.