# CODE OF VIRGINIA

## Title 63.2

Welfare (Social Services)

# Title 63.2 - WELFARE (SOCIAL SERVICES)

# Subtitle I - GENERAL PROVISIONS RELATING TO SOCIAL SERVICES

## Chapter 1 - GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

"Board" means the State Board of Social Services.

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

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

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

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

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

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

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

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

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

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

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

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

"Department" means the State Department of Social Services.

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

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

"Energy assistance" means benefits to assist low-income households with their home heating and cooling needs, including, but not limited to, purchase of materials or substances used for home heating, repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance 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 12 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 five through 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 related to the provider by blood or marriage 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 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 planned program of services designed to assist a child age 16 and over and persons who are former foster care children between the ages of 18 and 21 in transitioning to self-sufficiency.

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

"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.

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

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

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

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

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

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

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

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

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

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

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

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

51.5-148) of Chapter 14 of Title 51.5 provided by local departments of social services in accordance with regulations and under the supervision of the Commissioner for Aging and Rehabilitative Services.

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

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

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

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

Code 1950, §§ 63-101, 63-222, 63-232, 63-347, 63-351; 1954, cc. 259, 290, 489; 1956, cc. 300, 641; 1960, cc. 331, 390; 1962, cc. 297, 603; 1966, c. 423; 1968, cc. 578, 585, §§ 63.1-87, 63.1-172, 63.1-195, 63.1-220; 1970, c. 721; 1972, cc. 73, 540, 718; 1973, c. 227; 1974, cc. 44, 45, 413, 415, § 63.1-250; 1975, cc. 287, 299, 311, 341, 437, 507, 524, 528, 596, §§ 63.1-238.1, 63.1-248.2; 1976, cc. 357, 649; 1977, cc. 105, 241, 532, 547, 559, 567, 634, 645, §§ 63.1-55.2, 63.1-55.8; 1978, cc. 536, 730, 749, 750; 1979, c. 483; 1980, cc. 40, 284; 1981, cc. 75, 123, 359; 1983, c. 66; 1984, cc. 74, 76, 498, 535, 781; 1985, cc. 17, 285, 384, 488, 518; 1986, cc. 80, 281, 308, 437, 594; 1987, cc. 627, 650, 681; 1988, c. 906; 1989, cc. 307, 647; 1990, c. 760; 1991, cc. 534, 595, 651, 694; 1992 c. 356, § 63.1-194.1; 1993, cc. 730, 742, 957, 993, § 63.1-196.001; 1994, cc. 107, 837, 865, 940; 1995, cc. 401, 520, 649, 772, 826; 1997, cc. 796, 895; 1998, cc. 115, 126, 397, 552, 727, 850; 1999, c. 454; 2000, cc. 61, 290, 500, 830, 845, 1058, § 63.1-219.7; 2002, c. 747; 2003, c. 467; 2004, cc. 70, 196, 245, 753, 814; 2006, c. 868; 2007, cc. 479, 597; 2008, cc. 475, 483; 2009, cc. 705, 813, 840; 2011, cc. 5, 156; 2012, cc. 803, 835; 2013, cc. 5, 362, 564; 2015, cc. 502, 503, 758, 770; 2016, c. 631.

**§ 63.2-100.1. Certified mail; subsequent mail or notices may be sent by regular mail**

Whenever in this title the Board or the Department is required to send any mail or notice by certified mail and such mail or notice is sent certified mail, return receipt requested, then any subsequent, identical mail or notice that is sent by the Board or the Department may be sent by regular mail.

2011, c. 566.

**§ 63.2-101. Authority of Department to request and receive information from other agencies; use of information so obtained; provide access to information for medical assistance eligibility purposes**

A. The Department may request and shall receive from the records of all departments, boards, bureaus or other agencies of this Commonwealth and of other states such information as is necessary for the purpose of carrying out the provisions and programs of this title, and the same are authorized to provide such information; provided that, a written statement from the requesting party stating the reason for seeking such record is submitted and filed with the record sought. The Department may make such information available only to public officials and agencies of this Commonwealth, and other states, and political subdivisions of this Commonwealth and other states, where the request for information relates to administration of the various public assistance or social services programs.

B. The Department shall provide, to the Department of Medical Assistance Services and to certain entities approved by the Board of Medical Assistance Services, access to information regarding a medical assistance applicant's receipt of public assistance from programs administered by the Department. Such access shall be limited to information necessary to determine an individual's eligibility for medical assistance services and to the extent specified in a memorandum of understanding between the Department and the Department of Medical Assistance Services.

1975, c. 9, § 63.1-1.1:1; 1981, c. 21; 2002, c. 747; 2016, c. 111.

**§ 63.2-102. Allowing access to records and information for public assistance programs and child support enforcement; penalty**

A. All records, information and statistical registries of the Department and local boards and other information that pertain to public assistance and child support enforcement provided to or on behalf of any individual shall be confidential and shall not be disclosed except to persons specified hereinafter and to the extent permitted by state and federal law and regulation. The local boards shall allow the Commissioner, at all times, to have access to the records of the local boards relating to the appropriation, expenditure and distribution of funds for, and other matters concerning, public assistance under this title.

Except as provided by state and federal law and regulation, no record, information or statistical registries concerning applicants for and recipients of public assistance and child support shall be made available except for purposes directly connected with the administration of such programs. Such purposes include establishing eligibility, determining the amount of the public assistance and child support, and providing social services for applicants and recipients. It shall be unlawful for any person to disclose, directly or indirectly, any such confidential information, and any person violating these provisions shall be guilty of a Class 1 misdemeanor.

B. If a request for a record or information concerning applicants for and recipients of public assistance or child support is made to the Department or a local department for a purpose not directly

connected to the administration of such programs, the Commissioner or local director shall not provide the record or information unless permitted by state or federal law or regulation.

Code 1950, §§ 63-41, 63-68, 63-140, 63-140.15, 63-161, 63-204, 63-220; 1952, c. 287; 1962, c. 621; 1968, cc. 43, 466, 578, §§ 63.1-34, 63.1-53, 63.1-126; 1970, c. 233; 1972, c. 718; 1974, c. 417; 1975, c. 311; 1984, c. 498; 1986, c. 594; 1988, c. 906; 1996, c. 455; 2001, c. 518; 2002, c. 747.

**§ 63.2-103. Confidential records and information concerning child support enforcement**

Any records established pursuant to the provisions of § 63.2-1902 shall be available only for the enforcement of support of children and their caretakers and to the Attorney General, prosecuting attorneys, law-enforcement agencies, courts of competent jurisdiction and agencies in other states engaged in the enforcement of support of children and their caretakers. Information pertaining to actions taken on behalf of recipients of child support services may be disclosed to the recipient and other parties pursuant to Board regulations. The Board shall adopt regulations regarding the release of information to parties involved in administrative proceedings pursuant to Chapter 19 (§ 63.2-1900 et seq.) of this title, taking into account the health and safety of the parties to whom the information is related, and such releases of information shall be permitted, notwithstanding the provisions of the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.). Information may also be disclosed to authorized persons, in accordance with 42 U.S.C. § 663, in cases of unlawful taking or restraint of a child.

1988, c. 906, § 63.1-274.6; 1990, c. 836; 1991, cc. 545, 588; 1994, c. 665; 1997, cc. 796, 895; 2001, c. 573; 2002, c. 747.

**§ 63.2-104. Confidential records and information concerning social services; penalty**

A. The records, information and statistical registries of the Department, local departments and of all child-welfare agencies concerning social services to or on behalf of individuals shall be confidential information, provided that the Commissioner, the Board and their agents shall have access to such records, information and statistical registries, and that such records, information and statistical registries may be disclosed to any person having a legitimate interest in accordance with state and federal law and regulation.

It shall be unlawful for any officer, agent or employee of any child-welfare agency; for the Commissioner, the State Board or their agents or employees; for any person who has held any such position; and for any other person to whom any such record or information is disclosed to disclose, directly or indirectly, any such confidential record or information, except as herein provided or pursuant to § 63.2-105. Every violation of this section shall constitute a Class 1 misdemeanor.

B. If a request for a record or information concerning applicants for and recipients of social services is made to the Department or a local department by a person who does not have a legitimate interest, the Commissioner or local director shall not provide the record or information unless permitted by state or federal law or regulation.

C. This section shall not apply to the disposition of adoption records, reports and information that is governed by the provisions of § 63.2-1246.

Code 1950, §§ 63-41, 63-140, 63-140.15, 63-161, 63-204, 63-220, 63-246; 1958, c. 433; 1962, c. 621; 1968, cc. 43, 578, §§ 63.1-34, 63.1-126, 63.1-209; 1972, c. 540; 1976, c. 365; 1977, c. 547, § 63.1-55.4; 1979, cc. 218, 666; 1981, c. 456; 1983, c. 604; 1986, c. 213; 1988, cc. 151, 898; 1994, c. 643; 2000, cc. 500, 830; 2001, cc. 503, 518; 2002, c. 747.

**§ 63.2-104.1. Confidentiality of records of persons receiving domestic and sexual violence services**

A. In order to ensure the safety of adult and child victims of domestic violence, dating violence, sexual assault, or stalking, or victims of a violation of § 18.2-48, 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1, and their families, programs and individuals providing services to such victims shall protect the confidentiality and privacy of persons receiving services.

B. Except as provided in subsections C and D, programs and individuals providing services to victims of domestic violence, dating violence, sexual assault, or stalking, or victims of a violation of § 18.2-48, 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1, shall not:

1. Disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through programs for victims of domestic violence, dating violence, sexual assault, or stalking, or victims of a violation of § 18.2-48, 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; or

2. Reveal individual client information without the informed, written, reasonably time-limited consent of the person about whom information is sought; the minor and his parent or legal guardian, in cases in which the client is an unemancipated minor; or the guardian of an incapacitated person as defined in § 64.2-2000, whether for this program or any other Federal, State, tribal, or territorial grant program. However, consent for release may not be given by the abuser or alleged abuser of the minor or incapacitated person, or the abuser or alleged abuser of the other parent of the minor.

C. If release of information described in subsection B is compelled by statutory or court mandate, the program or individual providing services shall:

1. Make reasonable attempts to provide notice to victims affected by the disclosure of information; and

2. Take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

D. Programs and individuals providing services to victims of domestic violence, dating violence, sexual assault, or stalking, or victims of a violation of § 18.2-48, 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1, may share:

1. Nonpersonally identifying data in the aggregate regarding services to their clients and non-personally identifying demographic information in order to comply with Federal, State, tribal, or territorial reporting, evaluation, or data collection requirements;

2. Court generated information and law-enforcement generated information contained in secure, governmental registries for protection order enforcement purposes; and

3. Information necessary for law enforcement and prosecution purposes.

For purposes of this section, "programs" shall include public and not-for-profit agencies the primary mission of which is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking, or victims of a violation of § 18.2-48, 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1.

E. For the purposes of this section, a person may be a victim of domestic violence, dating violence, sexual assault, or stalking, or a victim of a violation of § 18.2-48, 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1, regardless of whether any person has been charged with or convicted of any offense.

2006, c. 135; 2016, cc. 666, 670.

**§ 63.2-105. Confidential records and information concerning social services; child-protective services and child-placing agencies**

A. The local department may disclose the contents of records and information learned during the course of a child-protective services investigation or during the provision of child-protective services to a family, without a court order and without the consent of the family, to a person having a legitimate interest when in the judgment of the local department such disclosure is in the best interest of the child who is the subject of the records. Persons having a legitimate interest in child-protective services records of local departments include, but are not limited to, (i) any person who is responsible for investigating a report of known or suspected abuse or neglect or for providing services to a child or family that is the subject of a report, including multidisciplinary teams and family assessment and planning teams referenced in subsections J and K of § 63.2-1503, law-enforcement agencies and attorneys for the Commonwealth; (ii) child welfare or human services agencies of the Commonwealth or its political subdivisions when those agencies request information to determine the compliance of any person with a child-protective services plan or an order of any court; (iii) personnel of the school or child day program as defined in § 63.2-100 attended by the child so that the local department can receive information from such personnel on an ongoing basis concerning the child's health and behavior, and the activities of the child's custodian; (iv) a parent, grandparent, or any other person when such parent, grandparent or other person would be considered by the local department as a potential caretaker of the child in the event the local department has to remove the child from his custodian; and (v) the Commitment Review Committee and the Office of the Attorney General for the purposes of sexually violent predator civil commitments pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

Whenever a local department exercises its discretion to release otherwise confidential information to any person who meets one or more of these descriptions, the local department shall be presumed to have exercised its discretion in a reasonable and lawful manner.

B. Any person who has not been legally adopted in accordance with the provisions of this title and who was a child for whom all parental rights and responsibilities have been terminated, shall not have access to any information from a child-placing agency with respect to the identity of the biological family, except (i) upon application of the child who is 18 or more years of age, (ii) upon order of a circuit court entered upon good cause shown, and (iii) after notice to and opportunity for hearing by the applicant for such order and the child-placing agency or local board that had custody of the child.

An eligible person who is a resident of Virginia may apply for the court order provided for herein to (a) the circuit court of the county or city where the person resides or (b) the circuit court of the county or city where the principal office of the child-placing agency or local board that controls the information sought by the person is located. An eligible person who is not a resident of Virginia shall apply for such a court order to the circuit court of the county or city where the principal office of the child-placing agency or local board that controls the information sought by the person is located.

If the identity and whereabouts of the biological family are known to the agency or local board, the court may require the agency or local board to advise the biological parents of the pendency of the application for such order. In determining good cause for the disclosure of such information, the court shall consider the relative effects of such action upon the applicant for such order and upon the biological parents.

2001, c. 518, § 63.1-209.1; 2002, c. 747; 2004, cc. 114, 220; 2006, cc. 863, 914.

**§ 63.2-106. Failure to obey subpoena or charging illegal fees; penalty**

If any person fails or refuses to obey any subpoena issued under the provisions of § 63.2-220 or § 63.2-322, or charges or receives any fee contrary to the provisions of § 63.2-508, he shall be guilty of a Class 1 misdemeanor.

Code 1950, §§ 63-139, 63-160, 63-203, 63-219; 1968, c. 578, § 63.1-125; 2002, c. 747.

## Chapter 2 - STATE SOCIAL SERVICES

## Article 1 - DEPARTMENT AND COMMISSIONER OF SOCIAL SERVICES

**§ 63.2-200. Department of Social Services created**

The Department of Social Services is hereby created in the executive branch responsible to the Governor. The Department shall be under the supervision and management of the Commissioner of Social Services.

1974, cc. 44, 45, § 63.1-1.1; 1981, c. 21; 2002, c. 747.

**§ 63.2-201. Appointment of Commissioner**

The Commissioner of Social Services, shall be appointed by the Governor, subject to confirmation by the General Assembly, if in session when the appointment is made, and if not in session, then at its next succeeding session.

Code 1950, § 63-2; 1968, c. 578, § 63.1-2; 1974, cc. 44, 45; 1981, c. 21; 2002, c. 747.

**§ 63.2-202. Term of office; vacancies**

The Commissioner shall hold office at the pleasure of the Governor for a term coincident with that of each Governor making the appointment, or until his successor is appointed and qualified. Vacancies shall be filled in the same manner as original appointments are made.

Code 1950, § 63-3; 1968, c. 578, § 63.1-3; 1981, c. 21; 2002, c. 747.

**§ 63.2-203. Powers and duties of Commissioner generally**

A. The Commissioner, subject to the regulations of the Board, shall have all of the powers and perform all the duties conferred upon him by law. Except as otherwise provided, he shall supervise the administration of the provisions of this title and shall see that all laws pertaining to the Department are carried out to their true intent and spirit.

B. The Commissioner shall enforce the regulations adopted by the Board.

Code 1950, §§ 63-5, 63-38, 63-254; 1968, cc. 578, 670, §§ 63.1-4, 63.1-31, 63.1-217; 1974, cc. 44, 45; 1981, c. 21; 1999, cc. 737, 763; 2002, c. 747.

**§ 63.2-204. Cooperation with local authorities**

The Commissioner shall assist and cooperate with local authorities in the administration of this title. He shall encourage and direct the training of all personnel of local boards and local departments engaged in the administration of any program within the purview of this title or Chapter 11 (§ 16.1-226 et seq.) of Title 16.1. The Commissioner shall collect and publish statistics and such other data as may be deemed of value in assisting the public authorities and other social agencies of the Commonwealth in improving the care of these persons and in correcting conditions that contribute to dependency and delinquency. The Commissioner shall also, in his discretion, initiate and conduct conferences designed to accomplish such ends and to further coordination of effort in this field.

Code 1950, § 63-39; 1968, cc. 578, 670, § 63.1-32; 1974, cc. 44, 45; 2002, c. 747.

**§ 63.2-205. Requiring reports from local boards; forms and submission schedule; approval of budgets by Commissioner**

A. The Commissioner shall require of local boards such reports relating to the administration of this title as the Commissioner may deem necessary to enable the Board and the Commissioner to exercise and perform the functions, duties and powers conferred and imposed by this title. He shall prescribe the form and submission schedule of applications, reports, affidavits, budgets and budget exhibits, and such other forms as may be required in the administration of this title.

B. The Commissioner shall review budget requests submitted by local boards, make modifications consistent with the requirements of this title and transmit the approved budget to each local board.

Code 1950, §§ 63-40, 63-42; 1968, c. 578, § 63.1-33; 1975, c. 368; 1976, c. 383; 2002, c. 747.

**§ 63.2-206. Cooperation with federal agencies**

The Commissioner shall cooperate with the Department of Health and Human Services and other agencies of the United States and with the local boards, in relation to matters set forth in this title, and in any reasonable manner that may be necessary for this Commonwealth to qualify for and to receive grants or aid from such federal agencies for public assistance and services in conformity with the provisions of this title, including grants or aid to assist in providing rehabilitation and other services to help individuals to attain or retain capability for self-care or self-support and such services as are likely to prevent or reduce dependency and, in the case of dependent children, to maintain and strengthen family life. The Commissioner shall make such reports in such form and containing information as such agencies of the United States may require and shall comply with such provisions as such agencies require to assure the correctness and verification of such reports.

Code 1950, § 63-43; 1968, c. 578, § 63.1-35; 2002, c. 747.

**§ 63.2-207. Authority to receive grants-in-aid, funds and gifts**

The Commissioner is authorized to receive, for and on behalf of the Commonwealth and its subdivisions, from the United States and agencies thereof, and from any and all other sources, grants-in-aid, funds and gifts, made for the purpose of providing, or to assist in providing, for funds for child welfare services including day care for children, disaster relief and emergency assistance awards, Temporary Assistance for Needy Families, and general relief, or any of them, including expenses of administration. Subject to the written approval of the Governor, the Commissioner is also authorized to receive from all such sources grants-in-aid, funds and gifts made for the purpose of alleviating, treating or preventing poverty, delinquency or other social problems encountered in programs under the supervision or administration of the Commissioner. All such funds shall be paid into the state treasury.

Code 1950, § 63-44; 1962, c. 297; 1964, c. 88; 1966, c. 105; 1968, c. 578, § 63.1-36; 1977, c. 37; 2002, c. 747.

**§ 63.2-208. Standards for personnel**

The Commissioner shall enforce the minimum education, professional and training requirements and performance standards as determined by the Board for personnel employed in the administration of this title and remove each employee who does not meet such standards.

Code 1950, § 63-46; 1968, cc. 578, 670, § 63.1-37; 2002, c. 747.

**§ 63.2-209. Divisions of Department**

The Commissioner shall establish in the Department such divisions and regional offices as may be necessary.

Code 1950, § 63-7; 1968, cc. 578, 669, § 63.1-7; 1974, cc. 44, 45; 1981, c. 21; 2002, c. 747.

**§ 63.2-210. Appointment of division heads**

The Commissioner shall appoint heads of the divisions, subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2.

Code 1950, § 63-8; 1968, c. 578, § 63.1-8; 1981, c. 21; 2002, c. 747.

**§ 63.2-211. Powers and duties of division heads**

The Commissioner may delegate to the heads of the various divisions and to such other employees of the Department as he deems desirable any and all of the powers and duties conferred upon him by law.

Code 1950, § 63-9; 1968, c. 578, § 63.1-9; 1981, c. 21; 2002, c. 747.

**§ 63.2-212. Employment of agents and employees**

The Commissioner may, subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2, employ or authorize the employment of such agents and employees as may be needed by the Commissioner and the Department in the exercise of the functions, duties and powers conferred and imposed by law upon him and the Department, and in order to effect a proper organization and to carry out its duties.

Code 1950, § 63-10; 1968, cc. 578, 670, § 63.1-10; 1981, c. 21; 2002, c. 747.

**§ 63.2-213. Powers, duties, titles and functions of agents and employees**

The functions, duties, powers and titles of the agents and employees provided for in § 63.2-212, and their salaries and remuneration, not in excess of the amount provided therefor by law, shall be fixed by the Commissioner, subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2.

Code 1950, § 63-11; 1968, c. 578, § 63.1-11; 1981, c. 21; 2002, c. 747; 2003, c. 467.

**§ 63.2-214. Bonds of such agents**

Proper bonds shall be required of all agents and employees who handle any funds which may come into custody of the Department. The premiums on the bonds shall be paid from funds appropriated by the Commonwealth for the administration of the activities of the Department.

Code 1950, § 63-12; 1968, c. 578, § 63.1-12; 2002, c. 747.

**§ 63.2-214.1. Marriage and family programs; funding**

A. To the extent authorized by federal law, the Department may spend up to one percent of all funds received through the federal Temporary Assistance for Needy Families block grant during each fiscal year to fund programs that support the development of healthy marriages and the strengthening of families.

B. A portion, not to exceed 10 percent, of the money required to be spent as provided in subsection A may be allocated to develop a process, in cooperation with any public college or university, for identifying best practices and outcomes for programs supported by grants made pursuant to this section.

C. If before implementation of any provision of this section a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

D. The Board shall adopt such rules and promulgate such regulations as may be necessary to implement programs developed pursuant to this section.

2008, c. 439.

**§ 63.2-214.2. Information related to shaken baby syndrome**

The Department shall make information about shaken baby syndrome, its effects, and resources for help and support for caretakers in a printable format, and information about how to acquire information about shaken baby syndrome and its effects in an audiovisual format, available to the public on its website. Such information shall be provided to every child welfare program required to be licensed by the Department at the time of initial licensure and upon request. The Department shall also make the information required in this section available to foster and adoptive parents and other persons, upon request.

2010, c. 551.

**§ 63.2-214.3. Information on human trafficking**

The Department, in consultation with experts in the field of human trafficking prevention, shall provide to the Board of Education:

1. Resource information on human trafficking, including strategies for the prevention of trafficking of children; and

2. Materials for distribution that describe local, state, and national resources to which students, parents, school resource officers, counselors, and school personnel can refer for information on human trafficking, including strategies for prevention of trafficking of children.

2012, cc. 317, 370.

## Article 2 - STATE BOARD OF SOCIAL SERVICES

**§ 63.2-215. State Board of Social Services**

There shall be a State Board of Social Services consisting of 11 members appointed by the Governor. In making appointments, the Governor shall endeavor to select appointees of such qualifications and experience that the membership of the Board shall include persons suitably qualified to consider and act upon the various problems that the Board may be required to consider and act

upon. The Board shall include a member from each of the social services regions of the state established by the Commissioner. At least one member of the Board shall be a licensed health care professional, one member shall be a representative of stand-alone licensed child care centers that meet the accountability standards of state recognized accreditation pursuant to § 22.1-19, and one member shall be a representative of religiously exempt child care centers. The appointments shall be subject to confirmation by the General Assembly if in session and, if not, then at its next succeeding session.

The members of the Board shall be appointed for four-year terms, except that appointments to fill vacancies shall be for the unexpired term.

No person shall be eligible to serve for or during more than two successive terms; however, any person appointed to fill a vacancy may be eligible for two additional successive terms after the term of the vacancy for which he was appointed has expired. Members of the Board may be suspended or removed by the Governor at his pleasure.

The Board shall select a chairman from its membership, and under rules adopted by itself may elect one of its members as vice-chairman. It shall elect one of its members as secretary.

The Board shall meet at such times as it deems appropriate and on call of the chairman when in his opinion meetings are expedient or necessary, provided that the Board meet at least six times each calendar year.

A majority of the current membership of the Board shall constitute a quorum for all purposes.

The main office of the Board shall be in the City of Richmond.

Code 1950, §§ 63-14, 63-15, 63-16, 63-18, 63-19, 63-20, 63-21, 63-22, 63-23; 1956, c. 104; 1968, cc. 465, 578, §§ 63.1-14, 63.1-15, 63.1-16, 63.1-18, 63.1-19, 63.1-20, 63.1-21, 63.1-22, 63.1-23; 1974, cc. 44, 45; 1976 c. 217; 1980, c. 315; 1981, c. 21; 1998, c. 468; 2002, c. 747; 2012, cc. 803, 835.

**§ 63.2-216. Powers and duties of Board in general**

In addition to such other duties as are assigned to it, the Board shall act in a capacity advisory to the Commissioner, and when requested shall confer and advise with him upon such matters as may arise in the performance of his duties. When requested by the Commissioner, or by the Governor, the Board shall investigate such questions and consider such problems as they, or either of them, may submit and shall report their findings and conclusions. The Board may also initiate investigations and consider problems and make recommendations to the Commissioner or to the Governor, of its own motion.

Code 1950, § 63-24; 1968, c. 578, § 63.1-24; 1981, c. 21; 1999, cc. 737, 763; 2002, c. 747.

**§ 63.2-217. Board to adopt regulations**

The Board shall adopt such regulations, not in conflict with this title, as may be necessary or desirable to carry out the purpose of this title. Before the Board acts on a regulation to be published in

the Virginia Register of Regulations pursuant to § 2.2-4007.05, the Board shall examine the potential fiscal impact of such regulation on local boards. For regulations with potential fiscal impact, the Board shall share copies of the fiscal analysis with local boards prior to submission of the regulation to the Department of Planning and Budget for purposes of the economic impact analysis under § 2.2-4007.04. The fiscal impact analysis shall include the projected costs and savings to the local boards to implement or comply with such regulation and, where applicable, sources of potential funds to implement or comply with such regulation.

The Board also may adopt such regulations to authorize local boards to destroy or otherwise dispose of such records as the local boards in their discretion deem are no longer necessary in such offices and that serve no further administrative, historical or financial purpose.

Code 1950, § 63-25; 1956, c. 125; 1968, c. 578, § 63.1-25; 1974, c. 507, § 63.1-238.5; 1976, c. 216; 1998, c. 558; 2002, cc. 391, 747; 2007, cc. 873, 916.

**§ 63.2-218. Board to adopt regulations regarding human research**

The Board shall adopt regulations to effectuate the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research, as defined in § 32.1-162.16, to be conducted or authorized by the Department, any agency or facility licensed by the Department, or any local department. The regulations shall require the human research committee to submit to the Governor, the General Assembly, and the Commissioner at least annually a report on the human research projects reviewed and approved by the committee and shall require the committee to report any significant deviations from the proposals as approved.

1992, c. 603, § 63.1-25.01; 2002, c. 747.

**§ 63.2-219. Board to establish employee entrance and performance standards**

The Board shall establish minimum education, professional and training requirements and performance standards for the personnel employed by the Commissioner and local boards in the administration of this title and adopt regulations to maintain such education, professional and training requirements and performance standards, including such regulations as may be embraced in the development of a system of personnel administration meeting requirements of the Department of Health and Human Services under appropriate federal legislation relating to programs administered by the Board. The Board shall adopt minimum education, professional and training requirements and performance standards for personnel to provide public assistance or social services.

The Board shall provide that the Department and its local boards or local departments shall not employ any person in any family-services specialist position that provides direct client services unless that person holds at least a baccalaureate degree. Such requirement shall not be waived by the Department, Board, or any local director or local governing body, unless such person has been employed prior to January 1, 1999, by the Department or its local boards or local departments in a family-services specialist position that provides direct client services.

The state grievance procedure adopted pursuant to Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 shall apply to the personnel employed by the Commissioner. A local social services department or local board shall adopt a grievance procedure that is either (i) adopted by the locality in which the department or board is located, or in the case of a regional department or board, the grievance procedure adopted by one of its localities in the regional organization; or (ii) approved by the Board consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2. The grievance procedure adopted by the local board shall apply to employees, including local directors, of the local boards and local departments.

Code 1950, §§ 63-26, 63-136, 63-140.13, 63-158, 63-200; 1960, c. 440; 1962, c. 621; 1966, c. 112; 1968, cc. 578, 668, 670, §§ 63.1-26, 63.1-123; 1974, cc. 491, 504; 1975, cc. 176, 438; 1984, c. 781; 1990, c. 537; 1995, cc. 770, 818; 1999, c. 854; 2002, c. 747; 2004, c. 208; 2005, c. 714; 2014, c. 285.

**§ 63.2-220. Board may administer oaths, conduct hearings and issue subpoenas**

The Board in the exercise and performance of its functions, duties and powers under the provisions of this title is authorized to hold and conduct hearings, issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents, to administer oaths and to take testimony thereunder.

Code 1950, § 63-27; 1968, c. 578, § 63.1-27; 2002, c. 747.

**§ 63.2-221. Board to investigate institutions at direction of Governor**

Whenever the Governor considers it proper or necessary to investigate the management of any institution licensed by or required to be inspected by the Board under the provisions of this title, he may direct the Board, or any committee or agent thereof, to make the investigation. The Board, committee or agent designated by the Governor shall have power to administer oaths and to summon officers, employees or other persons to attend as witnesses and to enforce their attendance and to compel them to produce documents and give evidence.

Code 1950, § 63-33; 1968, c. 465, § 63.1-28.1; 2002, c. 747.

## Article 3 - STATEWIDE HUMAN SERVICES INFORMATION AND REFERRAL PROGRAM

**§ 63.2-222. Establishment of system**

There shall be created a statewide human services information and referral system designed to:

1. Collect and maintain accurate and complete resource data on a statewide basis;

2. Link citizens needing human services with appropriate community resources to satisfy those needs;

3. Assist in planning for human services delivery at the local, regional and state levels; and

4. Provide information to assist decision-makers in allocating financial and other resources to respond to state and local human service priorities.

1984, c. 402, § 63.1-314.1; 2002, c. 747.

**§§ 63.2-223 through 63.2-225. Repealed**

Repealed by Acts 2003, cc. 54 and 75.

**§ 63.2-226. Duties of Department**

A. The Department shall assume administrative responsibilities for the statewide system. In this capacity, the Department shall establish an office to:

1. Develop a plan for the design and implementation of a statewide human services information and referral program;

2. Coordinate and supervise the implementation and operation of the information and referral program;

3. Coordinate funding for the system;

4. Select regional providers of information and referral services;

5. Supervise coordination of information management among information and referral regions across the Commonwealth;

6. Encourage effective relationships between the system and state and local agencies and public and private organizations;

7. Develop and implement a statewide publicity effort;

8. Provide training, technical assistance, research, and consultation for regional and local information and referral centers, and to localities interested in developing information and referral services;

9. Determine a core level of services to be funded from state government resources;

10. Coordinate standardization of resource data collection, maintenance and dissemination;

11. Stimulate and encourage the availability of statewide information and referral services;

12. Develop and implement a program for monitoring and assessing the performance and success of the information and referral program; and

13. Collect information on child-specific payments made through the Title IV-E foster care program and submit information, when available, to the Office of Children's Services.

B. The Department, in consultation with the Virginia Employment Commission and Virginia Community College System, shall develop and implement a plan for the provision to citizens receiving any form of public assistance of information regarding courses on financial literacy, offered online or through any other appropriate medium, that are available to such citizens at no cost to them.

1984, c. 402, § 63.1-314.5; 1990, c. 915; 2002, c. 747; 2003, cc. 54, 75; 2008, c. 277; 2015, cc. 366, 521.

**§ 63.2-227. Regional providers; duties**

There shall be established a regional system of providers of information and referral services. The Department shall select the regional providers.

The regional providers shall:

1. Collect, maintain and disseminate resource data;

2. Provide citizen access to information about resources throughout the Commonwealth;

3. Assist in planning functions by providing selected data to the Department on a regular basis;

4. Provide data to public and private agencies other than the Department on a contractual basis;

5. Cooperate with the state administering agency;

6. Seek funds from available sources;

7. Maintain effective relationships between the system and state and local agencies and public and private organizations; and

8. When feasible and appropriate and within the limits of available funds, establish satellite offices or develop cooperative agreements with local information and referral groups and resource and referral groups that can assist the regional providers in performing their duties and responsibilities.

1984, c. 402, § 63.1-314.6; 1990, c. 915; 2002, c. 747; 2003, cc. 54, 75.

**§ 63.2-228. Repealed**

Repealed by Acts 2003, cc. 54 and 75.

## Chapter 3 - LOCAL SOCIAL SERVICES

## Article 1 - LOCAL BOARDS OF SOCIAL SERVICES

**§ 63.2-300. Local boards established by local governments**

There shall be a local board in each county and city of the Commonwealth. However, any combination of counties and cities may establish one local board for those jurisdictions as hereinafter provided in this article.

Code 1950, § 63-51; 1952, c. 409; 1956, c. 126; 1968, cc. 578, 584, § 63.1-38; 2002, c. 747.

**§ 63.2-301. Local board appointments and terms of office**

The members of each local board first appointed shall be appointed initially for terms of from one to four years so as to provide for the balanced overlapping of the terms of the membership thereon and the members of a local board representing more than one county or city shall be appointed initially for such terms, of not less than one nor more than four years, as may be determined by

the governing bodies of their respective counties or cities. Subsequent appointments shall be for a term of four years each, except that appointments to fill vacancies that occur during terms shall be for the remainder of those unexpired terms. Appointments to fill unexpired terms shall not be considered full terms, and such persons shall be eligible to be appointed to two consecutive full terms. No person may serve more than two consecutive full terms; however, this section shall not apply to a member of a local board who is also a member of the board of supervisors for a county represented by the board, who shall serve at the pleasure of the board of supervisors of which he is a member or until such time as he ceases to be a member of the board of supervisors, or in cases in which a local government official is constituted to be the local board. A member of a local board who serves two consecutive full terms shall be ineligible for reappointment to such local board until the end of an intervening two-year period dating from the expiration of the last of the two consecutive terms.

Code 1950, § 63-56; 1952, c. 409; 1956, c. 126; 1968, cc. 467, 578, § 63.1-39; 1974, c. 120; 1975, c. 300; 1980, c. 377; 2002, c. 747; 2005, c. 16; 2014, cc. 95, 121.

**§ 63.2-302. How local board for a single county is constituted**

The local board serving a single county shall be, at the discretion of the governing body of the county, either a local government official or a local board consisting of residents of the county who are, except as provided in § 63.2-303, appointed by the governing body of the county. If residents of the county constitute the local board, such board shall consist of three or more members. The governing body shall appoint a member of the board of supervisors to be one member of the local board, except in those cases where the board of supervisors has determined otherwise. When a member of the board of supervisors who was appointed as a member of the local board ceases to be a member of the board of supervisors, his office as a member of the local board shall also be vacated and another member of the board of supervisors shall be appointed to fill such vacancy.

If a local government official constitutes the local board, he may designate a senior staff person in the local department to act in his behalf, in his absence, to approve, cancel or change grants made under the provisions of this title.

Code 1950, §§ 63-52, 63-54, 63-56; 1952, c. 409; 1956, c. 126; 1966, c. 258; 1968, cc. 467, 578, § 63.1-40; 1970, c. 465; 1972, cc. 147, 714; 1984, c. 586; 2002, c. 747.

**§ 63.2-303. Local boards in counties having special forms of county government**

Where the statutes dealing with special forms of county government provide for the appointment of local boards, the provisions of such statutes shall control.

Code 1950, § 63-60; 1968, c. 578, § 63.1-41; 1970, cc. 465, 467; 1981, c. 90; 2002, c. 747.

**§ 63.2-304. How local board of a city is constituted**

The local board serving a single city shall be, at the discretion of the city council, either a local government official or a local board consisting of five members appointed by the city council of such city in accordance with the provisions of § 63.2-301. The city council may appoint one of its

members to the local board. When a member of the city council who was appointed as a member of the local board ceases to be a member of the city council, his office as a member of the local board shall also be vacated and another member of the city council may be appointed to fill the vacancy.

If a local government official constitutes the local board, he may designate a senior staff person in the local department to act in his behalf, in his absence, with respect to approving, cancelling or changing grants made under the provisions of this title.

Code 1950, § 63-53.1; 1952, c. 409; 1956, c. 126; 1958, c. 195; 1968, c. 578, § 63.1-43; 1977, c. 36; 2002, c. 747; 2006, cc. 84, 158.

**§ 63.2-305. Advisory boards**

A. If the governing body of a city or county or the governing bodies of any combination of cities and counties participating in a district designate, under the provisions of §§ 63.2-302, 63.2-304 or § 63.2-307, a local government official as constituting the local board, such governing body or bodies shall appoint a board to serve in an advisory capacity to such local government official with respect to the duties and functions imposed upon him by this title.

Each such advisory board shall consist of no fewer than five and no more than thirteen members. In the case of an advisory board established for a district, there shall be at least one member on the board from each county and city in the district. The members shall be appointed initially for terms of from one to four years so as to provide for the balanced overlapping of the terms of the membership thereon. Subsequent appointments shall be for a term of four years each, except that appointments to fill vacancies that occur during terms shall be for the remainder of these unexpired terms. Appointments to fill unexpired terms shall not be considered full terms, and such persons shall be eligible to be appointed to two consecutive full terms. No person shall serve more than two consecutive full terms. The local government official shall be an ex officio member, without vote, of the advisory board.

The advisory board shall elect its own chairman and shall meet at least bimonthly. In addition to regularly scheduled meetings, it may meet at the call of the chairman or on the petition of at least one-half of the members.

B. The powers and duties of the advisory board shall be:

1. To interest itself in all matters pertaining to the public assistance and social services needed by people of the political subdivision or subdivisions served by the local department;

2. To monitor the formulation and implementation of public assistance and social services programs by the local department;

3. To meet with the local government official who constitutes the local board at least four times a year for the purpose of making recommendations on policy matters concerning the local department;

4. To make an annual report to the governing body or bodies, concurrent with the budget presentation of the local department, concerning the administration of the public assistance and social services programs; and

5. To submit to the governing body or bodies, from time to time, other reports that the advisory board deems appropriate.

1977, c. 36, § 63.1-43.1; 1981, c. 264; 1984, c. 586; 1989, c. 356; 2002, c. 747.

**§ 63.2-306. Local boards established by two or more political subdivisions**

The provisions of §§ 63.2-302 and 63.2-304 notwithstanding, the Board, with the prior consent of the Governor, may establish districts consisting of two or more counties or cities or combinations of cities and counties. Except as provided in § 63.2-307, there shall be one district board of not less than three nor more than nine members for each such district. There shall be at least one member of the district board from each county and city in the district. Additional representation from one or more counties or cities within the stipulated maximum may be determined by the Board, with population being the principal factor in such determination. Appointments to the district board shall be made by the governing body of each county and city in the district, upon certification of the establishment of such district by the Board. The Board shall designate the initial term of each district board member to be not less than one nor more than four years in duration, so as to provide for a balanced overlapping of terms. Subsequent appointments shall be for terms of four years each, except appointments to fill a vacancy, which shall be for the unexpired term. Appointments to fill unexpired terms shall not be considered full terms, and such persons shall be eligible to be appointed to two consecutive full terms. No member shall serve for more than two consecutive full terms. A member who serves two consecutive full terms shall be ineligible for reappointment to the district board until the end of an intervening one-year period dating from the expiration of the last of the two consecutive terms. Before requesting the Governor's approval for establishment of any such district, the Board shall consult with the governing body of each county or city that would be included in the district. No county or city shall be included in any such district served by one board unless the local governing body so elects. The district board of any district consisting of two or more counties or cities or combinations of counties and cities shall be considered to be a local board.

Administrative costs of a district board shall be borne by the participating local governments on the basis of population and case load with equal weight being given to each factor or in such manner as the respective governing bodies provide by agreement.

In cases in which a district board includes a county, a member of the board of supervisors of such county may be a member of the local board.

In cases in which a district board includes a city, a member of the council of such city may be a member of the local board, notwithstanding any provision of the charter of any city in force on March 4, 1971.

Code 1950, § 63-51; 1952, c. 409; 1956, c. 126; 1968, cc. 578, 584, § 63.1-44; 1970, c. 465; 1971, Ex. Sess., c. 138; 1973, c. 201; 1980, cc. 377, 383; 1989, c. 356; 1992, c. 169; 1996, c. 481; 2002, c. 747.

**§ 63.2-306.1. Withdrawal from district boards of social services**

A. The governing body of any county or city that has combined with one or more other counties or cities to establish a district board pursuant to § 63.2-306 may withdraw from such district board and establish a local board in accordance with a transition plan approved by the Board.

B. The governing body of a county or city that wishes to withdraw from a district board shall adopt a resolution stating the local governing body's intent to withdraw from the district board and setting forth the terms and conditions of a transition plan for the withdrawal from the district board and establishment of a local board by the local governing body. Such resolution shall be communicated to the Board and all other counties and cities participating in the district board.

C. The transition plan required pursuant to subsection B shall include provisions related to:

1. Establishment of a local board, including appointment of members to such local board;

2. Withdrawal from the district board, including payment of any outstanding obligations by the local governing body to the district board and transfer of any property or funds from the district board to the local board;

3. Transfer of financial and administrative powers and duties from the district board to the local board;

4. Continued provision of social services in accordance with laws of the Commonwealth and regulations of the Board; and

5. Any other matters necessary to accomplish the withdrawal of the local governing body from the district board.

The transition plan shall also include a timeline for establishment of the local board and withdrawal of the local governing body from the district board and shall state whether the local governing body intends to withdraw from any single department of social services established by the local governing bodies of the counties or cities participating in the district board.

D. Whenever the Board fails or refuses to approve the terms and conditions of a transition plan submitted pursuant to subsection B, the county or city seeking to withdraw from a district board may petition the circuit court of the county or city for approval of the transition plan. The Board, the district board, and the counties and cities participating in the district board shall be named as parties in such action. The circuit court may approve a transition plan for the withdrawal of a county or city from a district board and establishment of a local board subject to such transition plan with such terms and conditions that the court may deem appropriate.

2014, c. 119.

**§ 63.2-307. Local boards serving certain districts**

Notwithstanding the provisions of § 63.2-306 :

1. The local board for the York County and City of Poquoson district may be, at the discretion of the governing bodies of the participating city and county, the local director. If such local director serves as the local board, he may designate a senior staff person in the local department to act on his behalf, in his absence, to approve, cancel or change grants made under the provisions of this title.

2. At the discretion of the governing bodies of the participating cities and counties, the local board for a district may be composed of the chief administrative officer of each political subdivision, who may designate his principal assistant to act on his behalf, in his absence, to approve, cancel or change grants made under the provisions of this title.

In addition, the provisions of § 63.2-305 shall apply.

1989, c. 356, § 63.1-44.1; 1995, cc. 262, 313; 2002, c. 747.

**§ 63.2-308. Suspension or removal of members**

Members of any local board may be suspended or removed for cause by the Board or by the local governing body authorized to appoint the members of the local board.

Code 1950, § 63-57; 1968, c. 578, § 63.1-45; 2002, c. 747.

**§ 63.2-309. Quorum**

A majority of the members of any local board shall constitute a quorum.

Code 1950, § 63-58; 1952, c. 409; 1956, c. 126; 1968, c. 578, § 63.1-46; 2002, c. 747.

**§ 63.2-310. Compensation and expenses**

Each member of the local board of a county or a city or of a district shall be paid his reasonable and necessary expenses incurred in attendance at meetings and while otherwise engaged in the discharge of his duties. In addition to such expenses, the governing body of each city or county may, out of its general fund, pay to each member of the local board, as compensation for his services, an amount to be fixed by the governing body of such city or county. No such county or city shall be reimbursed out of either state or federal funds for any part of such compensation paid.

Code 1950, § 63-59; 1954, c. 258; 1962, c. 491; 1966, c. 478; 1968, c. 578, § 63.1-47; 1972, c. 11; 1973, c. 201; 1978, c. 754; 1998, cc. 80, 192; 2002, c. 747.

**§ 63.2-311. Fiscal officer for district board; compensation of such officer**

Whenever two or more political subdivisions establish a district pursuant to § 63.2-306 there shall be appointed a district fiscal officer for such district board. The district fiscal officer shall perform all the fiscal functions for the district board that had been previously performed for the local board by the treasurer or other fiscal officer of each locality within the district. The district fiscal officer for such district board shall be the treasurer of one of the participating counties or cities or combination of counties and cities, as mutually agreed upon by the district board with the approval of the governing bodies. In the event the local authorities cannot agree on the selection of a district

fiscal officer, the Commissioner shall designate such district fiscal officer. For his services as district fiscal officer, the treasurer shall be paid such salary as may be agreed upon by the district board. In the event the district board and the treasurer so designated cannot agree on such compensation, then the amount of salary to be paid shall be determined by a court of competent jurisdiction and the amount so fixed by the judge shall be binding upon both the treasurer and the district board. Provided, that nothing contained in this section shall affect the regular salary or expense allowance of the treasurer as fixed annually by the State Compensation Board.

1973, c. 201, § 63.1-47.1; 1974, cc. 44, 45, 503; 2002, c. 747.

**§ 63.2-312. Meetings; organization; chairman and vice-chairman; secretary**

The governing body or bodies shall immediately notify the members of the local board of their appointment, and such members shall, within fifteen days after their notification, elect a chairman and vice-chairman from among their number. The local board shall meet at least bimonthly and on other occasions on call of the chairman or in pursuance of action by the local board. At least one such meeting a year shall be an orientation and training session for local board members. The local director shall act as secretary of his local board and shall keep on file minutes of the attendance and transactions at all meetings of the local board.

Code 1950, §§ 63-61, 63-62, 63-64; 1952, c. 409; 1968, c. 578, § 63.1-48; 1975, c. 190; 1978, c. 754; 2002, c. 747.

**§ 63.2-313. Administration of law**

The local boards shall, subject to the regulations of the Board, administer the applicable provisions of this title in their respective counties and cities. The local boards shall also administer the applicable provisions of Chapter 14 (§ 51.5-116 et seq.) of Title 51.5 pursuant to the regulations of the Commissioner for Aging and Rehabilitative Services.

Code 1950, § 63-66; 1968, c. 578, § 63.1-50; 2002, c. 747; 2012, cc. 803, 835.

**§ 63.2-314. Funds received from public or private sources; authority of local governing bodies to make grants; authority of local boards to establish regulations and fees for court ordered services**

A. The local boards are authorized to receive and disburse funds derived from public grants or private sources in the form of gifts, contributions, bequests or legacies for the purpose of aiding needy persons within their respective counties, cities or districts. The governing bodies of counties and cities are authorized to make public grants hereunder to their respective local boards. Eligibility for aid from these sources need not be limited to requirements established for the public assistance programs in this Commonwealth. All funds received from such sources shall be deposited in the treasuries of the respective county, city or local district board to the credit of the county, city or local district board and dispensed as authorized by such county, city or local district board.

B. Local boards may establish regulations and fee schedules and may receive fees for services that a court directs a local department to perform pursuant to § 16.1-274.

Code 1950, § 63-66.1; 1954, c. 269; 1968, c. 578, § 63.1-51; 1972, c. 387; 1973, c. 201; 1975, c. 125; 1976, c. 516; 1993, c. 975; 2002, c. 747.

**§ 63.2-315. Furnishing reports**

The local boards shall furnish to the Commissioner and the governing body of its county or city such reports relating to the administration of this title as the Commissioner and such governing body, respectively, may require. The local boards shall furnish such reports relating to the administration of applicable provisions of Chapter 14 (§ 51.5-116 et seq.) of Title 51.5 to the Commissioner for Aging and Rehabilitative Services, as may be required.

Code 1950, §§ 63-67, 63-67.1, 63-67.2; 1950, p. 641; 1954, c. 265; 1968, c. 578, § 63.1-52; 1984, c. 498; 2002, c. 747; 2012, cc. 803, 835.

**§ 63.2-316. Submission of budget to governing bodies**

The local boards shall submit annually to the boards of supervisors or city councils of their respective counties and cities a budget, containing an estimate and supporting data setting forth the amount of money needed to carry out the provisions of this title, and a copy thereof shall be forwarded to the Commissioner, subject to the provisions of § 63.2-205.

Code 1950, § 63-69; 1952, c. 409; 1968, c. 578, § 63.1-54; 1975, c. 368; 2002, c. 747.

**§ 63.2-317. Employment of counsel for local boards and employees; payment of expenses**

Except in those cases in which the attorney for the Commonwealth or county or city attorney represents the local board, a local board may employ legal counsel in civil matters to give advice to or represent the local board or any of its members or the employees of the local department and may pay court costs and other expenses involved in the conduct of such civil matters from funds appropriated by the local governing body for the administration of the local department. Such counsel may be employed on a part-time basis for any particular action or actions. A local board may employ in-house counsel to provide general legal advice and representation and advice related to specific actions. However, prior approval of the Department shall be obtained by the local board before counsel is employed except in instances where legal counsel is necessary for the provision of services or assistance to eligible recipients under this title.

The Department may reimburse the local board for all or any part of such expenditures at the same rate in effect for all other administrative costs at the time of the expenditure. However, the Department shall not reimburse the local board for any expenses for which payment was available through an insurance policy currently in force.

Where such counsel is employed by the local board, the attorney for the Commonwealth or city attorney or county attorney may be relieved of his responsibility to represent the local board or local department in that matter.

1976, c. 382, § 63.1-54.1; 1977, c. 184; 1985, c. 438; 2002, c. 747; 2014, cc. 122, 536.

**§ 63.2-318. Payment of legal fees and expenses for certain local department employees**

If any employee of a local department is arrested, indicted or otherwise prosecuted on any criminal charge arising out of an act committed in the discharge of his official duties, and the charge is subsequently terminated by entry of an order of dismissal, or nolle prosequi or upon trial he is found not guilty, the local board by which he is employed may reimburse such employee for all or part of the legal fees and expenses incurred by the employee in defense of such charge. The Department may reimburse the local board all or any part of such expenditures at the same rate in effect for all other administrative costs at the time of the expenditure to the extent that funds are available.

1977, c. 82, § 63.1-54.2; 1985, c. 438; 2002, c. 747.

**§ 63.2-319. Child welfare and other services**

Each local board shall provide, either directly or through the purchase of services subject to the supervision of the Commissioner and in accordance with regulations adopted by the Board, any or all child welfare services herein described when such services are not available through other agencies serving residents in the locality. For purposes of this section, the term "child welfare services" means public social services that are directed toward:

1. Protecting the welfare of all children including handicapped, homeless, dependent, or neglected children;

2. Preventing or remedying, or assisting in the solution of problems that may result in the neglect, abuse, exploitation or delinquency of children;

3. Preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving these problems and preventing the break up of the family where preventing the removal of a child is desirable and possible;

4. Restoring to their families children who have been removed by providing services to the families and children;

5. Placing children in suitable adoptive homes in cases where restoration to the biological family is not possible or appropriate; and

6. Assuring adequate care of children away from their homes in cases where they cannot be returned home or placed for adoption.

Each local board is also authorized and, as may be provided by regulations of the Board, shall provide rehabilitation and other services to help individuals attain or retain self-care or self-support and such services as are likely to prevent or reduce dependency and, in the case of dependent children, to maintain and strengthen family life.

Code 1950, § 63-72.1; 1966, c. 593; 1968, cc. 466, 578, § 63.1-55; 1973, c. 122; 1977, c. 634; 1982, c. 171; 1984, c. 781; 1986, c. 281; 1992, cc. 837, 880; 2002, c. 747.

**§ 63.2-320. Accepting and expending certain funds on behalf of children placed by or entrusted to local board when no guardian appointed; disposition of funds when children discharged**

A local board is authorized and empowered to accept and expend on behalf of and for the benefit of any child placed by it where legal custody remains with the parents or guardians, committed or entrusted to its care under §§ 63.2-900 and 63.2-903, when no guardian has been appointed, funds or money paid or tendered as pension, compensation, insurance or other benefit from the U.S. Department of Veterans Affairs or under the Railroad Retirement Act or the old age and survivors' insurance provisions of the Social Security Act, as amended, or funds contributed or paid by parents or other persons for the support of such child, and the local board may, from any such funds received, provide for the current or future maintenance of such child.

Whenever any child is discharged by the local board all such funds held by the local board shall be paid to the child's guardian if such funds exceed $1,000 upon such guardian posting bond as may be required by law, or disbursed in accordance with § 8.01-606, if the sum does not exceed $1,000.

Code 1950, § 63-73.1; 1954, c. 224; 1958, c. 239; 1968, c. 578, § 63.1-57; 1994, c. 865; 2002, c. 747.

**§ 63.2-321. Interest in and cooperation for public assistance and social services; directing local director**

It shall be the duty of each local board to interest itself in all matters pertaining to the public assistance and social services needed by people of the political subdivision or subdivisions served by the local department, to direct the activities of the local director and to cooperate with the juvenile and domestic relations courts and all other agencies operating for the social betterment of the community.

Code 1950, § 63-72; 1952, c. 409; 1968, c. 578, § 63.1-57.1; 2002, c. 747.

**§ 63.2-322. Conducting hearings, issuing subpoenas, etc**

Local boards in the exercise and performance of their functions, duties and powers under the provisions of this title are authorized to hold and conduct hearings, issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents, to administer oaths and to take testimony thereunder.

Code 1950, § 63-74; 1968, c. 578, § 63.1-58; 2002, c. 747.

**§ 63.2-323. Emergency payments**

In emergency situations or in the event of delay or error in a state issuance of payments for public assistance and social services to eligible recipients, or expenditures for administration and services, emergency payments shall be issued by local boards as authorized by Board regulations. In emergency situations that result from lost or stolen checks, the Department shall assume liability

for losses incurred by local boards due to fraudulent acts by recipients; however, the local board shall make diligent efforts to recoup any such lost funds in accordance with Board regulations.

1975, c. 336, § 63.1-58.1; 1978, c. 296; 2002, c. 747.

## Article 2 - LOCAL DEPARTMENTS AND LOCAL DIRECTORS OF SOCIAL SERVICES

### § 63.2-324. Local departments of social services

There shall be a local department of social services for each county or city under the supervision and management of a local director. However, two or more counties, cities, or any combination thereof, whether having separate local boards or a district board, may unite to establish a local department of social services and appoint a local director of social services to administer this title in such counties and cities, in which case such local director shall be the local director for each such county and city and the expenses incident to such local department shall be divided in such manner as the respective governing bodies provide by agreement.

Code 1950, §§ 63-75, 63-75.1; 1952, c. 409; 1968, c. 578, § 63.1-59; 2002, c. 747.

### § 63.2-325. Appointment of local directors of social services and local employees

Subject to the personnel standards and regulations of the Board, the local director shall be appointed by the local board, or, where the city charter or statutes relating to special forms of city or county government designate some other appointing authority, then by such other appointing authority, from a list of eligibles furnished by the Commissioner. Subject to the personnel standards, and regulations of the Board, the local boards or other appointing authority shall employ, or authorize the local director to employ, such other employees as may be required by the Commissioner to administer this title in the county or city.

Code 1950, §§ 63-76, 63-77; 1968, c. 578, § 63.1-60; 2002, c. 747.

### § 63.2-326. Service at pleasure of local board or local director

The local director and other employees shall serve at the pleasure of the local board, or other appointing authority, subject to the provisions of the merit system plan as defined in § 63.2-100. If other employees are employed by the local director, they shall serve at the pleasure of the local director, within the provisions of the merit system plan.

Code 1950, § 63-78; 1960, c. 207; 1968, c. 578, § 63.1-61; 1994, c. 82; 2002, c. 747.

### § 63.2-327. Removal by Commissioner

Any local director and any such employee who does not meet the personnel standards established by the Board may be removed by the Commissioner.

Code 1950, § 63-79; 1968, c. 578, § 63.1-62; 1970, c. 721; 2002, c. 747.

### § 63.2-328. Bond

Before entering upon the discharge of his duties, every local director shall enter bond with surety to be approved by the court or judge, in such sum as the court or judge may fix, conditioned upon the faithful discharge of his duties.

Code 1950, § 63-81; 1968, c. 578, § 63.1-64; 2002, c. 747.

**§ 63.2-329. Bond of certain employees of local boards**

Every employee duly authorized to certify payments to be made or authorized to draw warrants on the treasurer or other fiscal officer shall, before entering upon the discharge of his duties, enter into a bond with surety to be approved by the judge of the circuit court of the county or city in such sum as the judge may fix, conditioned upon the faithful discharge of his duties. However, such sum shall be at least fifteen percent of the annual gross expenditures of the agency less non-recurring items. The provisions of this section shall not apply in localities when provision for bonding such employees has been made by their governing bodies and the amount of the bonding equals or exceeds the amounts specified in this section.

Code 1950, § 63-81.1; 1956, c. 415; 1968, c. 578, § 63.1-65; 1984, c. 507; 2002, c. 747.

**§ 63.2-330. Compensation**

The local director and other persons employed to administer the provisions of this title in each county or city shall be paid such compensation by such county or city as shall be fixed by the local board or other appointing authority within the compensation plan provided in the merit system plan. With the approval of the Board and the local governing body, the local board may provide that the local director and such other employees shall be paid compensation in excess of the maximums permitted in the compensation plan. Such excess compensation shall be paid wholly from the funds of such county or city and any federal funds that are available and appropriate for such use.

Code 1950, § 63-82; 1964, c. 359; 1968, cc. 467, 578, § 63.1-66; 2002, c. 747.

**§ 63.2-331. Counties with special forms of government**

In any county having a special form of government under which the governing body of the county would be the appointing authority of the local board, local director, and local employees, the governing body may, subject to the personnel standards and regulations of the Board, authorize the local board to exercise the powers relating to the employment of the local director and other employees required to administer this title in such county and the fixing of their compensation or authorize the local board to exercise such powers insofar as they relate to the local director and the local director to exercise such powers insofar as they relate to other employees required to administer this title in such county.

Code 1950, § 63-85; 1954, c. 573; 1968, c. 578, § 63.1-67; 2002, c. 747.

**§ 63.2-332. Powers and duties of local directors**

The local director shall be the administrator of the local department and shall serve as secretary to the local board. Under the supervision of the local board, unless otherwise specifically stated, and

in cooperation with other public and private agencies, the local director, in addition to the functions, powers and duties conferred and imposed by other provisions of law, shall have the powers and perform the duties contained in this title.

The local director shall designate nonattorney employees who are authorized to (i) initiate a case on behalf of the local department by appearing before an intake officer or (ii) complete, sign, and file with the clerk of the juvenile and domestic relations district court, on forms approved by the Supreme Court of Virginia, petitions for foster care review, petitions for permanency planning hearings, petitions to establish paternity, motions to establish or modify support, motions to amend or review an order, or motions for a rule to show cause.

Code 1950, § 63-87; 1968, c. 578, § 63.1-67.1; 1972, c. 73; 2002, c. 747; 2016, c. 704.

**§ 63.2-333. Agent of Commissioner**

The local director shall act as agent for the Commissioner in implementing the provisions of federal and state law and regulation.

Code 1950, § 63-91; 1968, c. 578, § 63.1-67.3; 2002, c. 747.

**§ 63.2-334. Cooperation with private agencies**

The local director shall foster cooperation between all public and private charitable and social agencies in the county or city to the end that public resources may be conserved and the social services needs of the county or city be adequately met.

Code 1950, § 63-97; 1968, c. 578, § 63.1-67.5; 2002, c. 747.

**§ 63.2-335. Keeping records**

The records of the cases handled and business transacted by the local department shall be kept in such manner and form as may be prescribed by the Board.

Code 1950, § 63-98; 1968, c. 578, § 63.1-67.6; 2002, c. 747.

**§ 63.2-336. Annual report**

At the request of the local governing body, the local director shall each year prepare and keep on file a full report of the local department's work and proceedings during the year. If such request is made, one copy of such report shall be filed with the local governing body and another with the Board.

Code 1950, § 63-99; 1968, c. 578, § 63.1-67.7; 1976, c. 214; 1978, c. 146; 2002, c. 747.

## Chapter 4 - FUNDING OF PUBLIC ASSISTANCE AND SOCIAL SERVICES

**§ 63.2-400. Local appropriation**

The governing body of each county and city shall each year appropriate sums of money sufficient to provide for the payment of public assistance and to provide social services, including cost of administration, under the provisions of Subtitles II and III of this title, within such county or city. Such governing bodies may also appropriate sums of money sufficient to provide for the full range

of public assistance and social services for children and adults as may be required by federal legislation for reimbursement thereunder. The respective governing bodies of the counties and cities shall also appropriate sums of money as shall be sufficient to provide for the foster care of children in the custody or under the supervision of the local boards.

Code 1950, § 63-105; 1956, c. 641; 1958, c. 388; 1968, cc. 578, 666, § 63.1-91; 2002, c. 747.

**§ 63.2-401. Reimbursement of localities by the Commonwealth**

Such funds as are received from the United States and agencies thereof as grants-in-aid for the purpose of providing public assistance and social services grants shall be paid monthly by the Commissioner to each county, city or district fiscal officer as reimbursement of the federal share of such grants as have been paid by each county and city under the provisions of Subtitle II and III of this title. Within the limits of the appropriations of state funds, the Commissioner shall reimburse the entire balance of such public assistance and social services grants as have been paid by each city, county or district fiscal officer after crediting them with the reimbursement made from federal funds. Within the limits of the appropriations of state funds, the Commissioner shall reimburse monthly each city, county or district fiscal officer to the extent of sixty-two and one-half percent of such expenditures made in connection with general relief provided under § 63.2-802. Within the limits of the appropriations of state funds for the purpose, the Commissioner shall reimburse monthly each city, county or district fiscal officer to the extent of eighty percent of expenditures made for auxiliary grants pursuant to § 51.5-160. Within the limits of state funds appropriated for the purpose, the Commissioner shall reimburse to each county, city or district fiscal officer an amount not less than fifty percent or more than sixty-two and one-half percent of such expenditures, not federally reimbursable, made for the care of children placed in family homes or institutions pursuant to §§ 63.2-900 and 63.2-903.

Administrative expenditures made by the localities in connection with the providing of public assistance grants, other benefits and related social services, including child welfare pursuant to § 63.2-319, shall be ascertained by the Board, and the Commissioner shall, within the limits of available federal funds and state appropriations, reimburse monthly each county, city or district fiscal officer therefor out of such federal and state funds in an amount to be determined by the Board not less than fifty percent of such administrative costs.

The Commissioner also shall reimburse monthly, to the extent funds are available for such purpose, each county, city or district fiscal officer out of state and federal funds, to the extent provided in the preceding paragraph, for monthly rental payments for office space provided the local department in publicly owned buildings, for payments that are based on the cost of initial construction or purchase of a building or a reasonable amount for depreciation of such building, and for the cost of repairs and alterations to either a privately or publicly owned building. However, no monthly rental payment shall exceed a reasonable amount as determined by the Commissioner.

Claims for reimbursement shall be presented by the local board to the Commissioner, and shall be itemized and verified in such manner as the Commissioner may require. Such claim shall, upon the approval of the Commissioner, be paid out of funds appropriated by the Commonwealth and funds received from the federal government for the purposes of Subtitles II and III of this title, to the treasurer or other fiscal officer of the county or city. Wherever two or more counties or cities have been combined to form a district pursuant to § 63.2-306, reimbursements by the Commissioner under this section shall be paid to the district fiscal officer or other person designated to receive such funds by the governing bodies of such counties or cities. The Commonwealth shall reimburse each county and city the full amount of public assistance grants provided for Temporary Assistance for Needy Families.

Code 1950, §§ 63-106, 63-107; 1956, cc. 608, 623; 1958, c. 519; 1962, c. 297; 1966, cc. 530, 599; 1968, cc. 466, 578, § 63.1-92; 1970, c. 776; 1972, cc. 73, 718; 1973, cc. 201, 264; 1974, cc. 44, 45, 488; 1975, c. 121; 1984, cc. 498, 781; 1985, c. 599; 2002, c. 747; 2012, cc. 803, 835.

**§ 63.2-402. Reimbursement of the Commonwealth by local board**

If any county or city through its appropriate authorities or officers fails or refuses to provide reimbursement of the Commonwealth, the Board shall authorize and direct the Commissioner to file at the end of each month with the State Comptroller and with the local governing body of such county or city a statement showing all disbursements and expenditures, including administrative expenditures, made for and on behalf of such county or city, and the Comptroller shall from time to time as such funds become available deduct from the funds appropriated by the Commonwealth, in excess of requirements of the Constitution of Virginia, for distribution to such county or city amounts required to reimburse the Commonwealth for expenditures incurred under the provisions of this section. All funds so deducted and transferred are hereby appropriated for the purposes set forth, and shall be expended and disbursed as provided in § 63.2-403. Any county or city may provide such other necessary or incidental social or rehabilitative services as may be authorized by the Board in connection therewith.

1974, c. 488, § 63.1-92.1; 1984, c. 781; 2002, c. 747.

**§ 63.2-403. Expenditures by Department**

A. Appropriations made to the Department by the General Assembly for carrying out the provisions of Subtitles II and III of this title, including funds received from the United States and other sources for such purpose, shall be used for the following purposes:

1. Paying such reasonable portion of the per diem and expenses of the members of the Board, the expenses of the Commissioner, the salaries and remuneration of agents and employees of the Board and of the Commissioner, as shall be chargeable for the administration of Subtitles II and III of this title;

2. Paying all costs and expenses incurred by the Board and the Commissioner in the administration of Subtitles II and III of this title;

3. Reimbursing the counties and cities to the extent provided in § 63.2-401;

4. Paying public assistance to eligible recipients, and expenditures for social services and administration, in the event the Board adopts regulations to provide for state issuance of any or all of such payments;

5. Paying to the United States, for so long as such payment shall be required as a condition for financial participation by the United States in any public assistance or social services program its proportionate share of the net amounts collected by local boards from recipients and estates of recipients; and

6. Paying to the Social Security Administration the cost of administering state supplementation of the Supplemental Security Income program if the Commonwealth agrees to such federal administration.

B. Expenditures and disbursements of all amounts appropriated for the foregoing purposes shall be made by the State Treasurer on warrants of the Comptroller issued with the approval of the Commissioner.

Code 1950, §§ 63-109, 63-111; 1956, c. 608; 1968, c. 578, § 63.1-93; 1970, c. 602; 1974, cc. 44, 45, 488, 503; 2002, c. 747.

**§ 63.2-404. Expenses of Auditor of Public Accounts, Comptroller and State Treasurer**

All expenses incurred by the Auditor of Public Accounts in auditing the books, records and accounts of the Board and the Commissioner, and in rendering other services to them and all expenses incurred by the Comptroller and the State Treasurer in performing the services required by or under Subtitles II and III of this title, may be treated as administrative expenses of the Department, and paid as such.

Code 1950, § 63-112; 1968, c. 578, § 63.1-95; 1984, c. 498; 2002, c. 747.

**§ 63.2-405. Provisions for determination of eligibility for medical care and medical assistance; provision of social services; regulations**

A. The Commissioner shall, in compliance with the state plan for medical assistance services, applicable regulations of the Board and other state and federal law, provide for the determination of eligibility for medical care and medical assistance and social services required for (i) state participation under Public Law 97 of the 89th Congress of the United States, approved July 30, 1965, as amended, and regulations of the Department of Health and Human Services; and (ii) other state and federal programs. The Commissioner, subject to the state plan for medical assistance services, applicable regulations of the Board and other state and federal law, may establish policies, in the form of guidance documents, necessary to implement such functions, including safeguarding information concerning applicants and recipients. An application for medical assistance services for a person admitted to a State Veterans Care Center located in the Commonwealth may be filed and processed in the jurisdiction where such Care Center is located.

B. The Commissioner for Aging and Rehabilitative Services shall provide for the determination of eligibility for participation in the Auxiliary Grant Program set forth in Article 9 (§ 51.5-159 et seq.) of Chapter 14 of Title 51.5.

1970, c. 721, § 63.1-97.1; 1974, cc. 44, 45; 1984, c. 498; 1996, c. 511; 2002, c. 747; 2004, c. 305; 2012, cc. 803, 835.

**§ 63.2-406. Authority of Board upon amendments of the Social Security Act or regulations of the Department of Health and Human Services**

In the event the Social Security Act or other statutes or regulations adopted by the Department of Health and Human Services are amended to change requirements to entitle the Commonwealth to federal grants or reimbursement for public assistance payments and expenditures for social services, the Board may by regulation adopt such standards, requirements and procedures that would bring the public assistance and social services programs into compliance with the federal requirements so as not to interfere with, diminish or jeopardize the Commonwealth's entitlement to federal grants or reimbursement for public assistance payments or expenditures for social services.

If federal statutes or regulations are amended to permit funds appropriated by Congress to be used for public assistance to or social services for any persons eligible for assistance under §§ 63.2-319 and 63.2-802, the Board may, pursuant to the provisions of § 63.2-217, make applicable such provisions of Subtitles II and III of this title as the Board finds necessary to enable the Commonwealth to receive reimbursement for such public assistance and social services. The Board may also by regulation define eligibility within the limitations of § 63.2-802 of persons to receive public assistance or social services under any amendments of the Social Security Act or other statutes. It is the purpose of this section to enable the Commonwealth to meet the requirements for federal reimbursement of public assistance or social services to persons who are eligible for public assistance or social services under Subtitles II and III of this title or who may be eligible under amendments of the Social Security Act.

Code 1950, § 63-220.1; 1950, p. 958; 1968, c. 578, § 63.1-98; 2002, c. 747.

**§ 63.2-407. Necessary or incidental public assistance or social services**

With respect to general relief, foster care for children and auxiliary grants for the aged, disabled or blind, any county or city may provide such other necessary or incidental public assistance or social services as may be authorized by the Board.

Code 1950, §§ 63-135, 63-140.12, 63-157, 63-199; 1960, c. 440; 1962, c. 621; 1966, c. 112; 1968, cc. 578, 668, § 63.1-122; 1970, c. 721; 1974, c. 504; 2002, c. 747.

**§ 63.2-408. When a locality fails to provide public assistance or social services; deductions by Comptroller; social services; withholding payments**

If any county or city, through its appropriate authorities or officers fails or refuses to provide public assistance or social services in accordance with the provisions of Subtitles II and III of this

title, the Board through appropriate proceedings shall require such authorities and officers to exercise the powers conferred and perform the duties imposed by Subtitles II and III.

For so long as the failure or refusal to provide for the public assistance or social services continues, the Board shall authorize and direct the Commissioner under regulations of the Board to provide for the payment of public assistance or the furnishing of social services in such county or city out of funds appropriated for the purpose of carrying out the provisions of Subtitles II and III of this title. In such event, the Commissioner shall at the end of each month file with the State Comptroller and with the local governing body of such county or city a statement showing all disbursements and expenditures, including administrative expenditures, made for and on behalf of such county or city, and the Comptroller shall from time to time as such funds become available deduct from funds appropriated by the Commonwealth, in excess of requirements of the Constitution of Virginia, for distribution to such county or city amounts required to reimburse the Commonwealth for expenditures incurred under the provisions of this section. All such funds so deducted and transferred are hereby appropriated for the purposes set forth, and shall be expended and disbursed as provided in § 63.2-403. If at any time a locality fails to operate public assistance programs or social service programs in accordance with state laws or regulations or fails to provide the necessary staff for the implementation of such programs, the Board may authorize and direct the Commissioner, under regulations of the Board, to withhold from such locality the entire reimbursement for administrative expenditures or a part thereof for the period of time the locality fails to comply with state laws or regulations.

Code 1950, §§ 63-26, 63-135, 63-136, 63-140.12, 63-140.13, 63-157, 63-158, 63-199, 63-200; 1960, c. 440; 1962, c. 621; 1966, c. 112; 1968, cc. 578, 668, 670, §§ 63.1-122, 63.1-123; 1970, c. 721; 1974, cc. 491, 504; 1975, cc. 176, 438; 1984, c. 781; 1990, c. 537; 1995, cc. 770, 818; 1999, c. 854; 2002, c. 747.

**§ 63.2-409. No lien to attach to property of applicant or recipient; release of existing unforeclosed liens**

No lien in favor of the Commonwealth or any of its political subdivisions shall be claimed against, levied or attached to the real or personal property of any applicant for or recipient of public assistance or social services as a condition of eligibility therefor or to recover such aid following the death of such applicant or recipient except applicants for or recipients of long-term care nursing facility benefits paid for by the Department of Medical Assistance Services. However, this section shall not bar any action by the Commonwealth or a local department that seeks reimbursement for part or all of the costs incurred by the Commonwealth or local department for care and maintenance provided to an applicant of the Federal Supplemental Security Income program during the application period when such applicant becomes eligible for the program retroactive to the date of application. In addition, this section shall not be construed to bar any action by the Commonwealth or a local department that seeks reimbursement for public assistance paid through the Temporary Assistance for Needy Families or refugee programs while the family attempts to dispose

of real property which together with other resources causes its total resources to be in excess of the state's allowable reserve.

1970, c. 753, § 63.1-133.1; 1977, c. 83; 1985, c. 293; 1993, cc. 953, 989; 2002, c. 747.

**§ 63.2-410. State pool of funds under the Children's Services Act**

The General Assembly and the governing body of each county and city shall appropriate such sum or sums of money for use by the community policy and management teams through the state pool of funds established in Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 as shall be sufficient to provide basic foster care services for children who are identified as being at risk, as determined by policy developed by the Board, or who are under the custody and control of the local board. The local governing body of each county and city shall appropriate such sums of money as necessary for the purchase of such other essential social services to children and adults under such conditions as may be prescribed by the Board in accordance with federally reimbursed public assistance and social service programs.

Code 1950, § 63-72.1; 1966, c. 593; 1968, cc. 466, 578, § 63.1-55; 1973, c. 122; 1977, c. 634; 1982, c. 171; 1984, c. 781; 1986, c. 281; 1992, cc. 837, 880; 2002, c. 747; 2015, c. 366.

**§ 63.2-411. Construction and operation of children's residential facilities**

Subject to approval by the Governor, a local board is authorized and empowered (i) to operate, construct, purchase, renovate or enlarge children's residential facilities for children who are in the custody of such local board by reason of commitment, voluntary entrustment or temporary detention order or (ii) to contract for such services from other counties or cities operating such facilities or from individuals or private corporations whose facilities are licensed by the appropriate state agency. The cost of maintaining children in such facilities through purchase of service contracts shall be established in accordance with regulations of the Board. Any moneys paid by a local board of a county or city to another county or city for services purchased pursuant to this section shall be applied by that county or city to the establishment and operation of such children's residential facilities. Children's residential facilities established pursuant to the provisions of this section shall meet standards prescribed by the Board.

Within the limits of appropriations of state funds, the Department shall reimburse the local board one half the actual cost of the construction, purchase, renovation or enlargement of each such facility. The Commonwealth shall reimburse the local board for administrative costs of operations of such facilities, including the entire reasonable cost of food, medicines, disinfectants, beds and bedding, utilities, equipment and service maintenance, transportation, staff salaries and fringe benefits, insurance and other necessary supplies in accordance with the provisions of § 63.2-401.

In the event that a local board requests and receives financial assistance for the costs of the local share of the construction, purchase, renovation or operation of children's residential facilities for children who are in the custody of such local board from any source other than reimbursement provided pursuant to this section, the total financial assistance and reimbursement shall not

exceed the total cost of construction, purchase, renovation or operations, and such funds shall not be considered state funds.

1973, c. 383, § 63.1-56.1; 1974, cc. 44, 45; 1977, c. 571; 1978, c. 293; 2002, c. 747.

**§ 63.2-412. Assistance to needy persons engaged in work or training programs; costs of administration of such programs**

Notwithstanding any other provisions of law, the Commissioner is authorized, subject to the approval of the Board, to initiate and administer a program providing for payments to or in behalf of needy persons engaged in work or training programs. Such payments may be made by transfer of funds to an appropriate agency administering a work or training program. The Commissioner is also authorized to pay all costs incurred in the administration of such programs from funds appropriated for such purposes.

Code 1950, § 63-5.3; 1968, c. 331, § 63.1-5.1; 1974, cc. 44, 45; 1981, c. 21; 2002, c. 747.

# Subtitle II - PUBLIC ASSISTANCE

## Chapter 5 - GENERAL PROVISIONS

**§ 63.2-500. Definitions**

For purposes of this subtitle, unless the context otherwise clearly requires:

"Agreement" means the written individualized agreement of personal responsibility required by this chapter.

"Case manager" means the worker designated by the local department, a private-sector contractor or a private community-based organization including nonprofit entities, churches, or voluntary organizations that provide case management services.

"Intensive case management" means individualized services provided by a properly trained case manager.

1994, cc. 858, 951, § 63.1-133.42; 1995, c. 450; 2002, c. 747.

**§ 63.2-501. Application for assistance**

A. Except as provided for in the state plan for medical assistance services pursuant to § 32.1-325, application for public assistance shall be made to the local department and filed with the local director of the county or city in which the applicant resides; however, when necessary to overcome backlogs in the application and renewal process, the Commissioner may temporarily utilize other entities to receive and process applications, conduct periodic eligibility renewals, and perform other tasks associated with eligibility determinations. Such entities shall be subject to the confidentiality requirements set forth in § 63.2-501.1. Applications and renewals processed by other entities pursuant to this subsection shall be subject to appeals pursuant to § 63.2-517. Such application may be made either electronically or in writing on forms prescribed by the Commissioner

and shall be signed by the applicant or otherwise attested to in a manner prescribed by the Commissioner under penalty of perjury in accordance with § 63.2-502.

If the condition of the applicant for public assistance precludes his signing or otherwise attesting to the accuracy of information contained in an application for public assistance, the application may be made on his behalf by his guardian or conservator. If no guardian or conservator has been appointed for the applicant, the application may be made by any competent adult person having sufficient knowledge of the applicant's circumstances to provide the necessary information, until such time as a guardian or conservator is appointed by a court.

B. Local departments or the Commissioner shall provide each applicant for public assistance with information regarding his rights and responsibilities related to eligibility for and continued receipt of public assistance. Such information shall be provided in an electronic or written format approved by the Board that is easily understandable and shall also be provided orally to the applicant by an employee of the local department, except in the case of energy assistance. The local department shall require each applicant to acknowledge, in a format approved by the Board, that the information required by this subsection has been provided and shall maintain such acknowledgment together with information regarding the application for public assistance.

Code 1950, §§ 63-116, 63-140.3, 63-142, 63-180, 63-206; 1962, c. 621; 1968, cc. 578, 781, § 63.1-107; 1970, c. 721; 1972, c. 718; 1975, cc. 524, 585; 1996, c. 511; 1997, cc. 801, 921; 2002, c. 747; 2012, cc. 240, 530; 2015, c. 513.

**§ 63.2-501.1. Application for public assistance; accurate contact information; authorized disclosures**

A. Every local department shall obtain accurate contact information from each applicant for public assistance, which shall include the best available address and telephone number of the applicant.

B. To the extent required by federal law and regulations, recipients of public assistance shall notify the local department of any change in address or telephone number within 30 days of such change, and the local department shall update any records maintained by the local department to reflect the change in the recipient's contact information.

C. Contact information received and maintained by local departments shall be confidential and shall not be disclosed except as required pursuant to § 63.2-102. However, information related to any application for or receipt of medical assistance services pursuant to § 32.1-325 may be disclosed for purposes directly connected to administration of the state plan for medical assistance services pursuant to § 1902(a)(7) of the Social Security Act.

2012, c. 367.

**§ 63.2-502. False application or false swearing; penalty**

Any person who knowingly makes any false application for public assistance or who knowingly swears or affirms falsely to any matter or thing required by the provisions of this title or as to any information required by the Commissioner, incidental to the administration of the provisions of

this title, to be sworn to or affirmed, shall be guilty of perjury and, upon conviction therefor, shall be punished in accordance with the provisions of § 18.2-434.

1975, c. 585, § 63.1-107.1; 2002, c. 747.

**§ 63.2-503. Procedure upon receipt of application**

A. Upon receipt of the application for public assistance, the local director or Commissioner shall make or cause to be made promptly an investigation to determine the completeness and correctness of the statements contained in the application and to ascertain the facts supporting the application and such other information as the local department or the Commissioner may require to determine whether an applicant is eligible for public assistance.

B. In conducting the investigation required by subsection A, and only when consistent with federal law and regulations, the local director shall verify each applicant's identity, income, assets, and any other information necessary for the purpose of determining eligibility for public assistance, eliminating the duplication of assistance, and deterring fraud.

C. In cases in which information obtained as a result of the investigation required by subsection A is inconsistent with information provided by the applicant at the time of application or otherwise suggests that the applicant may not be eligible for public assistance, the local director shall notify the applicant in writing and provide opportunity for the applicant to explain the discrepancy. If the applicant fails to respond within 10 days of the date of such notice, the local director shall deny the application for public assistance. If the applicant responds within 10 days of such notice, upon receipt of such response, the local director shall conduct such further investigation as may be necessary to verify the applicant's response and resolve the discrepancy or other issue arising from comparing the information provided by the applicant with information obtained as a result of the investigation required by subsection A. If the local director determines that the information obtained as a result of the investigation required by subsection A is accurate, and that as a result the applicant is ineligible for public assistance, the local director shall so notify the applicant and public assistance shall be denied. In any case in which the local director believes that the applicant has obtained or attempted to obtain public assistance by means of willful false statements or representations, impersonation, or other fraudulent devices, the local director shall initiate a fraud investigation pursuant to § 63.2-526.

D. The Department shall establish a means to obtain and provide the data necessary for the local departments to conduct the search required by subsection B in an automated electronic format. In doing so, the Department may use a third-party contractor. The local department shall immediately take action upon obtaining information indicating a change in a recipient's circumstances that could warrant reconsideration, cancellation, or changes in the amount of public assistance paid to the recipient in accordance with the provisions of § 63.2-514.

E. The Department shall report to the General Assembly no later than December 1 of each year the following:

1. Which specific types or sources of information local directors used, either directly or through a third-party contractor, during the past year for the purpose of verifying applicants' identity, income, assets, and other information pursuant to subsection B; and

2. Any types or sources of information that the Department plans to make available to local directors to use in the future to verify applicants' identity, income, assets, and other information and the approximate date on which the local directors plan to begin using those types or sources of information.

F. The Department shall include in its report required pursuant to subsection E the number of applications for public assistance received in accordance with this section, the number of cases in which eligibility for public assistance was approved or denied, and the number of cases referred for investigation and the reasons in each case.

G. The Board may by regulation authorize the local directors to provide immediate and temporary assistance to persons pending action of the local departments.

H. In the event that any provision of this section conflicts with federal law or regulations, provisions of federal law shall prevail.

Code 1950, §§ 63-117, 63-140.4, 63-143, 63-181, 63-207, 63-212; 1960, c. 440; 1962, c. 621; 1966, c. 112; 1968, cc. 578, 781, § 63.1-108; 1974, c. 422; 2002, c. 747; 2015, cc. 509, 513.

**§ 63.2-503.1. Legal presence required for public assistance; exceptions; proof of legal presence**

A. In addition to meeting the existing eligibility requirements of the benefits applied for, no person who is not a United States Citizen or legally present in the United States shall receive state or local public assistance pursuant to this subtitle, except for state or local public assistance that is mandated by Federal Law pursuant to 8 U.S.C. § 1621.

B. In addition to providing proof of other eligibility requirements, at the time of application for any state or local public benefit, an applicant who is 19 years of age or older shall provide affirmative proof that he is a U.S. citizen or is legally present in the United States. Such affirmative proof shall consist of documentary evidence as required pursuant to § 46.2-328.1 or a social security number as verified by the Social Security Administration. An applicant who is under the age of 19 years shall not be required to provide such affirmative proof; however, such person upon reaching the age of 19 years shall comply with the provisions of this section.

An applicant who cannot provide proof that he is a citizen or legally present at the time of application shall sign an affidavit under oath attesting that he is a U.S. citizen or legally present in the United States in order to receive temporary benefits as provided in this section. The affidavit shall be on or consistent with forms prepared by the Commissioner, and shall be subject to and include an explanation of the provisions of § 63.2-502 relating to penalties for knowingly providing false

information on a public document. The agency shall report in writing to the appropriate attorney for the Commonwealth those who are determined to have falsely attested to lawful presence.

Once an applicant has provided the sworn affidavit required by this subsection, he shall be eligible to receive temporary benefits for either:

1. Ninety days or until such time that it is determined that he is not legally present in the United States, whichever is earlier, or

2. Indefinitely if the applicant provides a copy of a completed application for a birth certificate that has been filed and is pending and being actively pursued in accordance with § 32.1-259 or 32.1-260 or any substantially similar law of another state, the District of Columbia, or United States territory or commonwealth. Such extension shall terminate upon the applicant's receipt of a birth certificate or a determination that a birth certificate does not exist because the applicant is not a United States citizen.

C. The provisions of subsection B shall not apply to persons applying for benefits exempted by subsection A of this section and subsection A of § 32.1-325.03.

2005, cc. 867, 876.

**§ 63.2-504. Decision of local department that applicant entitled to public assistance**

Upon completion of the investigation, the local department shall determine whether the applicant is eligible for public assistance under this subtitle, and, if eligible, the amount of such public assistance and the date upon which such public assistance shall begin. If the local department approves the payment of public assistance, such public assistance shall thereupon, until changed, modified, or revoked, be paid as hereinafter provided.

Code 1950, §§ 63-118, 63-144, 63-182, 63-208; 1968, cc. 578, 781, § 63.1-109; 1974, c. 422; 2002, c. 747; 2015, c. 513.

**§ 63.2-505. Determining the amount of public assistance**

The Board shall adopt regulations governing the amount of public assistance persons receive under the provisions of this subtitle. In making such regulations, the Board shall consider significant differences in living costs in various counties and cities and, unless otherwise precluded by law, shall establish or approve such variations in monetary public assistance standards for shelter allowance on a regional or local basis, as may be appropriate.

The amount of public assistance any person receives under the provisions of this subtitle shall be determined according to Board regulations with regard to (i) the property and income of the person and any support he receives from other sources, including from persons legally responsible for his support, and (ii) the average cost of providing public assistance statewide. It shall be sufficient to provide public assistance that, when added to all other income and support of the recipient (exclusive of that not to be taken into account as hereinafter provided), provides such person with a reasonable subsistence. In determining the income of and support available to a person, the

amount of income required to be exempted by federal statute, or if the federal statute makes such exemption permissive, then such portion thereof as may be determined by the Board shall not be considered in determining the amount of assistance any person may receive under this subtitle.

Any amounts received by a person pursuant to a settlement agreement with, or judgment in a lawsuit brought against, a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to "Agent Orange" shall be disregarded in determining the amount of public assistance such person may receive from state public assistance programs and from federal public assistance programs to the extent permitted by federal law or regulation, and such amounts shall not be subject to a lien or be available for reimbursement to the Commonwealth or any local department for public assistance, notwithstanding the provisions of § 63.2-409.

Any individual or family applying for or receiving public assistance under the Temporary Assistance for Needy Families Program, medical assistance services for low-income families with children, food stamp, or energy assistance programs, to the extent permitted by federal law and regulation, may have or establish one savings or other investment account per assistance unit not to exceed $5,000. Any such account, including any interest earned thereon or appreciation in value thereof, shall be exempt from consideration in any calculation under any specified public assistance program as long as no funds are withdrawn from the account. The State Board shall promulgate regulations permitting the withdrawal of funds from the account for purposes related to self-sufficiency, disregarding the funds withdrawn for such purposes in any calculation under any specified public assistance program, and establishing penalties for amounts withdrawn for any other purposes or other misuse of these funds.

Code 1950, §§ 63-119, 63-145, 63-183, 63-209; 1950, p. 624; 1952, c. 62; 1954, c. 659; 1958, c. 519; 1962, cc. 363, 403; 1964, c. 92; 1966, c. 456; 1968, cc. 578, 781, § 63.1-110; 1970, c. 721; 1974, c. 328; 1977, c. 503; 1989, cc. 333, 521; 1993, c. 922; 1994, c. 263; 2001, c. 483; 2002, cc. 360, 747.

**§ 63.2-505.1. Transitional food stamp benefits**

To the extent permitted by federal law, the Department shall provide transitional food stamp benefits for a period of not more than five months after the date on which Temporary Assistance for Needy Families (TANF) cash assistance is terminated. However, no household shall be eligible for transitional food stamp benefits if TANF cash assistance was terminated because all children in the assistance unit were removed from the home as a result of a child protective services investigation.

2005, c. 463.

**§ 63.2-505.2. Eligibility for food stamps; drug-related felonies**

A person who is otherwise eligible to receive food stamp benefits shall be exempt from the application of section 115(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, and shall not be denied such assistance solely because he has been convicted

of a felony offense of possession of a controlled substance in violation of § 18.2-250, provided such person is complying with, or has already complied with, all obligations imposed by the criminal court, is actively engaged in or has completed a substance abuse treatment program, participates in periodic drug screenings, and any other obligations as determined by the Department.

2005, c. 576.

**§ 63.2-506. Public assistance not transferable or subject to execution**

Except as provided in § 63.2-512, no public assistance given under this subtitle shall be transferable or assignable, at law or in equity, and none of the money paid or payable as public assistance under this subtitle shall be subject to execution, levy, attachment, garnishment or other legal process, or to the operation of any bankruptcy or insolvency laws.

Code 1950, § 63-102; 1968, c. 578, § 63.1-88; 2002, c. 747.

**§ 63.2-507. Personal representatives for recipients of public assistance funds**

A. If any otherwise qualified applicant for, or recipient of, benefits accruing under the provisions of this subtitle is or shall become unable to manage the funds accruing thereunder, or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, or, in the case of Temporary Assistance for Needy Families, the benefits are not being used for the children, a petition may be filed by the local director of the county or city wherein the applicant or recipient resides, in any court of that county or city having jurisdiction in fiduciary matters for the appointment of a personal representative not an employee of the local department, for the purpose of receiving and managing any such payments accruing thereunder for any such recipient or payee. The petition shall allege one or more of the above grounds for the appointment of such representative.

B. The court shall summarily order a hearing on the petition and shall cause the applicant, recipient, or payee to be notified at least five days in advance of the time and place for the hearing. Findings of fact shall be made by the court without a jury. The court may require the local director to furnish a report containing any information necessary and this report shall remain confidential. Reports and findings of fact under this section shall not be competent as evidence in any proceeding dealing with any subject matter other than provided in this section.

C. If the court finds that the applicant, recipient, or payee is unable to manage such payments, or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, or, in the case of Temporary Assistance for Needy Families, the payment is not being used for such child or children, the court may enter an order stating its findings and appointing some responsible person, not an employee of the local department, as personal representative of the applicant, recipient or payee for the purpose set forth herein.

D. The court may in its discretion at the time of the appointment or subsequently require the personal representative to give bond to assure the faithful performance of the duties required. An accounting by the personal representative shall be made at least annually and the court may

require additional accounting at such intervals as may be deemed necessary. Failure to render such accounts and to account satisfactorily for all proceeds received shall be sufficient cause for the removal of the personal representative. The personal representative may be removed by the court upon the petition of the local director and another such representative may be appointed. No court costs shall be assessed in proceedings under this section; however, when the accruing benefits exceed $500 per year per applicant or recipient, the clerk of the court shall assess a fee of $5.

Code 1950, § 8-750.1; 1962, c. 418; 1972, c. 73; 1975, c. 118; 1977, c. 624, § 63.1-88.1; 2002, c. 747.

**§ 63.2-508. Fees for representing applicant or recipient**

No person shall make any charge or receive any fees for representing an applicant for or recipient of public assistance with respect to his application or request for increased assistance prior to a determination thereon by the local board, whether such fee or charge is paid by the applicant or recipient or any other person.

Code 1950, § 63-103; 1968, cc. 466, 578, § 63.1-89; 2002, c. 747.

**§ 63.2-509. Public assistance subject to amendment or repeal of laws**

All public assistance granted under this subtitle shall be deemed to be granted and to be held subject to the provisions of this subtitle and any amending or repealing act that may hereafter be passed, and no recipient shall have any claim for compensation, or otherwise, by reason of his public assistance being affected in any way by any amending or repealing act.

Code 1950, § 63-104; 1968, c. 578, § 63.1-90; 2002, c. 747.

**§ 63.2-510. Obligation of person to support certain children living in same home; penalty**

A person shall be responsible for the support and maintenance of any child or children living in the same home in which he and the natural or adoptive parent of such child or children cohabit as man and wife and any such person who without cause willfully neglects or refuses or fails to provide for such support and maintenance shall be guilty of a misdemeanor and upon conviction shall be punished in accordance with the provisions of § 20-61.

A pregnancy or the birth of a child during the time a person occupies the status set out above shall not be required as proof of cohabitation.

The obligations imposed herein shall continue so long as such person occupies the status herein described.

1972, c. 536, § 63.1-90.1; 1974, c. 464; 2002, c. 747.

**§ 63.2-511. Repealed**

Repealed by Acts 2016, c. 452, cl. 1.

**§ 63.2-512. Recovery of public assistance erroneously paid**

Any assistance or part thereof erroneously paid to a recipient or former recipient may be recovered by the Board or local board from the recipient or former recipient as a debt. In accordance with

Board regulations, the amount erroneously paid may also be recovered from the income, assets or other property of the recipient or former recipient or from the public assistance payable to the recipient.

1975, c. 320, § 63.1-127.2; 1983, c. 449; 2002, c. 747.

**§ 63.2-513. Notification of change in circumstances**

If at any time during the continuance of public assistance any change occurs, including but not limited to, the possession of any property or the receipt of regular income by the recipient or by any person who is included within a recipient's grant, that, in the circumstances upon which current eligibility or amount of assistance were determined, would materially affect such determination, it shall be the duty of such recipient to notify as defined by regulation the local department of such change, and the local board may either cancel the public assistance, or alter the amount thereof.

Any recipient who knows or reasonably should know that such change in circumstances will materially affect his eligibility for assistance or the amount thereof and willfully fails to comply with the provisions of this section, is guilty of a violation of § 63.2-522.

Code 1950, §§ 63-124, 63-149.1; 1952, c. 533; 1968, c. 578, § 63.1-112; 1973, c. 482; 1975, c. 320; 1980, c. 19; 1986, c. 93; 2002, c. 747.

**§ 63.2-514. Reconsideration or changes in amount of public assistance; cancellation**

A. Eligibility for public assistance shall be reconsidered in accordance with federal law or regulations by the local department at least annually or upon receipt of information indicating a change in the recipient's circumstances that may affect the amount of assistance paid to a recipient or the recipient's eligibility for assistance and at such other times as the local board may deem necessary. As part of such reconsideration, the local department shall conduct an investigation to determine whether a recipient is eligible for renewal of public assistance. Such investigation shall include a review of information described in subsection B of § 63.2-503 for each applicant. After such investigation, the amount of public assistance may be changed or public assistance may be entirely withdrawn, if the local department finds that the recipient's circumstances have altered sufficiently to warrant such action.

B. In cases in which information obtained as a result of the investigation required by subsection A is inconsistent with information provided by the applicant, the local department shall notify the applicant in writing and provide opportunity for the applicant to explain the discrepancy. If the applicant fails to respond within 10 days of the date of such notice, the local department shall refuse to renew the applicant's eligibility for public assistance. If the applicant responds within 10 days of such notice, upon receipt of such response, the local department shall conduct such further investigation as may be necessary to verify the applicant's response and resolve the discrepancy between information provided by the applicant and information obtained as a result of the investigation required by subsection A. If the local department determines that the information

obtained as a result of the investigation required by subsection A is accurate and that as a result the applicant is ineligible for public assistance, the local director of social services shall so notify the applicant and public assistance shall be denied. In any case in which the local department believes that the applicant has obtained or attempted to obtain public assistance by means of willful false statements or representations, impersonation, or other fraudulent devices, the local director shall initiate a fraud investigation pursuant to § 63.2-526.

C. If the local director does not act within 30 days of the receipt of information affecting the amount of assistance or the eligibility therefor as to any recipient, or if the circumstances require immediate action, the Commissioner may make necessary adjustments in the amount of public assistance or suspend further assistance to any such individual pending action by the local department.

Code 1950, §§ 63-123, 63-149, 63-187, 63-214; 1968, cc. 578, 781, § 63.1-113; 2002, c. 747; 2015, c. 509.

**§ 63.2-515. Notice to applicant or recipient of decision**

As soon as the local board makes any decision granting, denying, changing or discontinuing any grant of public assistance, it shall give written notice thereof to the applicant or recipient.

Code 1950, §§ 63-121, 63-140.5, 63-147, 63-149, 63-185, 63-187, 63-214; 1962, c. 621; 1968, c. 578, § 63.1-114; 2002, c. 747.

**§ 63.2-516. Record of decision**

The local board shall preserve for such time as the Commissioner may prescribe, a record of its decision and all supporting documents and records including the findings and recommendations of the local director.

Code 1950, §§ 63-122, 63-140.6, 63-148, 63-186, 63-211; 1962, c. 621; 1968, c. 578, § 63.1-115; 2002, c. 747.

**§ 63.2-517. Right of appeal to Commissioner**

Any applicant or recipient aggrieved by any decision of a local board in granting, denying, changing or discontinuing public assistance, may, within thirty days after receiving written notice of such decision, appeal therefrom to the Commissioner.

Any applicant or recipient aggrieved by the failure of the local board to make a decision within a reasonable time may ask for a review of the same by the Commissioner.

The Commissioner may delegate the duty and authority to duly qualified hearing officers to consider and make determinations on any appeal or review by an applicant for or recipient of public assistance concerning any decision of a local board. The Commissioner shall establish an appeals review panel to review administrative hearing decisions upon the request of either the applicant or the local board. Such panel shall determine if any changes are needed in the conduct of future hear-

ings, or to policy and procedures related to the issue of the administrative appeal, and periodically report its findings to the Commissioner.

Any applicant or recipient aggrieved by any decision of a local board concerning food stamps may appeal to the Commissioner in accordance with federal law and regulation.

Code 1950, §§ 63-131, 63-140.8, 63-153, 63-195, 63-216; 1962, c. 621; 1968, cc. 578, 781, § 63.1-116; 1970, c. 361; 1972, c. 718; 1975, c. 524; 1997, c. 412; 2002, c. 747.

**§ 63.2-518. Action by Commissioner on appeal**

The Commissioner shall provide an opportunity for a hearing, reasonable notice of which shall be given in writing to the applicant or recipient and to the proper local board in such manner and form as the Commissioner may prescribe. The Commissioner may make or cause to be made an investigation of the facts. The Commissioner shall give fair and impartial consideration to the testimony of witnesses, or other evidence produced at the hearing, reports of investigations of the local board and local director or of investigations made or caused to be made by the Commissioner, or any facts which the Commissioner may deem proper to enable him to decide fairly the appeal or review.

Code 1950, §§ 63-132, 63-140.9, 63-154, 63-196; 1962, c. 621; 1968, cc. 578, 781, § 63.1-117; 1972, c. 718; 1975, c. 524; 1997, c. 412; 2002, c. 747.

**§ 63.2-519. Finality of decision of Commissioner**

The decision of the Commissioner shall be binding and considered a final agency action for purposes of judicial review of such action pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

Code 1950, §§ 63-134, 63-140.11, 63-156, 63-198; 1962, c. 621; 1968, c. 578, § 63.1-119; 1989, cc. 677, 734; 1997, c. 412; 2002, c. 747.

**§ 63.2-520. How public assistance paid**

Public assistance shall be paid to or on behalf of the applicant monthly, or at such other time or times as the regulations of the Board may provide, by the treasurer, the district fiscal officer, or other disbursing officer of the county or city, upon order of the local board or local director, from funds appropriated or made available for such purpose by the local governing body of such county or city. Wherever two or more counties or cities have been combined to form a district pursuant to § 63.2-306, such public assistance payments shall be made by the district fiscal officer.

In the event, however, that the Board adopts regulations to provide for state issuance of public assistance payments, such public assistance shall be paid by the State Treasurer. In emergency situations or in the event of delay or error in a state issuance of public assistance payments, emergency payments may be issued by local boards as authorized by Board regulations.

Code 1950, §§ 63-126, 63-140.7, 63-150, 63-190, 63-213; 1956, c. 578; 1962, c. 621; 1968, c. 578, § 63.1-120; 1970, c. 721; 1972, c. 718; 1973, c. 201; 1974, cc. 488, 503; 1975, c. 337; 2002, c. 747.

**§ 63.2-521. Change of residence**

Any recipient of Temporary Assistance for Needy Families or medical assistance who moves from one county or city in this Commonwealth to another county or city therein, shall thereafter be treated as if the grant of Temporary Assistance for Needy Families or medical assistance had been made by the county or city into which he moves, and the local board of the county or city from which he moves shall transfer all necessary records relating to the recipient to the local board of the county or city into which such recipient moves.

Code 1950, §§ 63-130, 63-152, 63-194; 1952, c. 449; 1968, c. 578, § 63.1-121; 2002, c. 747.

**§ 63.2-522. False statements, representations, impersonations and fraudulent devices; penalty**

Whoever obtains, or attempts to obtain, or aids or abets any person in obtaining, by means of a willful false statement or representation, or by impersonation, or other fraudulent device, public assistance or benefits from other programs designated under regulations of the Board, State Board of Health or the Board of Medical Assistance Services to which he is not entitled or who fails to comply with the provisions of § 63.2-513 is guilty of larceny. It shall be the duty of the local director, the Commissioner of Health or the Director of the Department of Medical Assistance Services to investigate alleged violations and enforce the provisions of this section. A warrant or summons may be issued for each violation of which the local director, the Commissioner of Health or the Director of the Department of Medical Assistance Services has knowledge. The local director, the Commissioner or the Director shall ensure that the attorney for the Commonwealth is notified of any investigation or alleged violation under this section. Trial for violations of this section shall be in the county or city from whose local department assistance was sought or obtained.

In any prosecution under the provisions of this section, it shall be lawful and sufficient in the same indictment or accusation to charge and therein to proceed against the accused for any number of distinct acts of such false statements, representations, impersonations or fraudulent devices that may have been committed by him within six months from the first to the last of the acts charged in the indictment or accusation.

Code 1950, §§ 63-137, 63-140.14, 63-159, 63-201, 63-217; 1952, c. 533; 1962, c. 621; 1968, c. 578, § 63.1-124; 1972, c. 659; 1975, c. 207; 1978, cc. 535, 672; 1982, c. 282; 1984, c. 578; 1986, cc. 93, 551; 1995, c. 294; 2002, c. 747.

**§ 63.2-523. Unauthorized use of food stamps, electronic benefit transfer cards, and energy assistance prohibited; penalties**

Whoever knowingly and with intent to defraud transfers, acquires, alters, traffics in or uses, or aids or abets another person in transferring, acquiring, altering, trafficking in, using, or possessing

food stamps, electronic benefit transfer cards or other devices subject to Consumer Financial Protection Bureau regulations regarding Electronic Fund Transfers, 12 C.F.R. § 1005.1 et seq., or benefits from energy assistance programs, or possesses food coupons, authorization to purchase cards, electronic benefit transfer cards or other devices subject to Consumer Financial Protection Bureau regulations regarding Electronic Fund Transfers, 12 C.F.R. § 1005.1 et seq., or benefits from energy assistance programs in any manner not authorized by law is guilty of larceny.

A violation of this section may be prosecuted either in the county or city where the public assistance was granted or in the county or city where the violation occurred.

1975, c. 388, § 63.1-124.1; 1978, c. 731; 1984, c. 535; 1994, c. 249; 2002, c. 747; 2016, c. 501.

**§ 63.2-524. Denial of benefits upon finding of fraudulent acts**

Any individual applying for or receiving benefits under the federal Food Stamp program or the Temporary Assistance for Needy Families program may be denied such benefits in accordance with federal law if such person is found by a court or pursuant to an administrative hearing to have intentionally (i) made a false or misleading statement or misrepresented, concealed or withheld facts, or (ii) committed any act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity, for the purpose of establishing or maintaining eligibility for such benefits.

The Board is authorized to adopt regulations governing conduct of administrative hearings and denial of benefits authorized by this section.

1989, c. 373, § 63.1-124.2; 1992, c. 189; 2002, c. 747.

**§ 63.2-525. Payment by Department for legal services**

Notwithstanding any provision of §§ 2.2-2814, 2.2-2815, 2.2-2816, 2.2-2823, 2.2-2824, 2.2-2825 or § 2.2-2826 to the contrary, whenever there shall be authorized by law an assistant attorney for the Commonwealth and such assistant's duties consist of the prosecution of public assistance fraud cases pursuant to §§ 18.2-95, 18.2-96, 63.2-502, 63.2-513, 63.2-522, 63.2-523 or § 63.2-524, the Department may, with the consent of the attorney for the Commonwealth of the jurisdiction, contract with the county or city or combination thereof for whom such assistant attorney for the Commonwealth is authorized regarding the duties of such assistant and regarding the payment by the Department of the entire salary, expenses, including secretarial services, and allowances of such assistant, as shall be approved by the Compensation Board, for the entire time devoted to these duties. Any such contract may provide that the county, city, or combination thereof shall pay the entire amount of such salary, expenses, and allowances and that the Department shall reimburse such county or city therefor. The amount of such salary, expenses, and allowances shall be set by the Compensation Board as provided by law.

1991, c. 5, § 63.1-124.3; 2002, c. 747.

**§ 63.2-526. Statewide fraud control program**

A. The Department shall establish a statewide fraud control program to ensure that fraud prevention and investigation are pursued throughout the Commonwealth. The Board shall adopt regulations to implement the provisions of this section.

B. Each local department shall establish fraud prevention and investigation units only insofar as money is appropriated therefor, which shall be staffed with sufficient qualified personnel to fulfill the regulations adopted by the Board. Solely for the purposes of obtaining motor vehicle licensing and registration information from entities within and without the Commonwealth, each local department fraud prevention and investigation unit shall be deemed to be a criminal justice agency as defined in § 9.1-101. The local departments may contract with other local departments to share a fraud prevention and investigation unit and may contract with private entities to perform fraud investigation. Any private entity performing fraud investigations shall comply with the requirements of § 30-138 and shall not be deemed to be a criminal justice agency.

C. The duties of fraud units may include but shall not be limited to (i) developing methods to prevent the fraudulent receipt of public assistance administered by the local board and (ii) investigating whether persons who receive public assistance through the local board are receiving it fraudulently. The fraud unit shall provide whatever assistance is necessary to attorneys for the Commonwealth in prosecuting cases involving fraud.

D. There is hereby created in the state treasury a special nonreverting fund to be known as the Fraud Recovery Special Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All overpayment moneys collected or recovered by local departments related to food stamp, Temporary Assistance for Needy Families, and other federal benefit programs administered by the Department net of any refunds due the federal government shall be paid into the state treasury and credited to the Fund, except as prohibited by federal law or regulation. Any moneys remaining in the Fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purpose of funding state and local fraud control programs.

Funding for local and state fraud control activities shall be comprised of (i) general funds appropriated for this activity, (ii) any federal funds available for this purpose, and (iii) balances in the Fund.

E. Local departments shall apply to the Commissioner for reimbursement from the Fund for the local share of direct costs. The Commissioner shall authorize reimbursements to the local departments from the Fund as provided in the general appropriation act. To receive or continue receiving reimbursements from the Fund, the local departments shall administer their fraud and investigation units in compliance with Board regulations. The number of local fraud workers for which the state will provide reimbursement in each locality shall be determined by Board regulations.

1992, c. 190, § 63.1-58.2; 1998, c. 775; 2000, c. 459; 2002, c. 747.

**§ 63.2-527. Notice of earned income tax credit**

The Department shall provide notice regarding the availability of the federal earned income tax credit authorized in § 32 of the Internal Revenue Code and the state earned income tax credit authorized in subdivision B 2 of § 58.1-339.8 to all recipients of Temporary Assistance for Needy Families pursuant to Chapter 6 (§ 63.2-600 et seq.), food stamps pursuant to § 63.2-801, or medical assistance pursuant to § 32.1-325 who had earned income in the prior tax year based on information available through the Virginia Employment Commission and, according to information made available by the Virginia Department of Taxation, either did not file federal or state income taxes or filed taxes and did not claim the federal or state earned income tax credit. Notice shall be distributed to recipients annually and shall include information on the qualifying income levels, the amount of credit available, the process for applying for the credit, and the availability of assistance in applying for the credit.

2008, c. 86; 2016, c. 29.

## Chapter 6 - TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM

**§ 63.2-600. Temporary Assistance for Needy Families (TANF); purpose; administration**

A. There is hereby created the Temporary Assistance for Needy Families Program, hereinafter referred to as TANF or the "Program." The Program shall be administered by the Department in compliance with Titles IV-A and IV-F of the Social Security Act and related federal regulations (excluding 45 C.F.R. Parts 255 and 256), as such laws and regulations were in effect at the time of the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193 on August 22, 1996, to the extent that such laws and regulations do not conflict with (i) those sections of P.L. 104-193 which are mandatory; (ii) waivers granted by the Department of Health and Human Services to Virginia in effect as of January 1, 1997; (iii) state laws and regulations; (iv) the State Plan For Title IV-A of the Social Security Act: Financial Assistance Aid to Families with Dependent Children in effect as of September 30, 1996; or (v) the Title IV-F of the Social Security Act Job Opportunities and Basic Skills Training Program State Plan in effect as of September 30, 1996. Further, in any instance where a state law or regulation enacted pursuant to a waiver conflicts with the terms of P.L. 104-193 or the Title IV-A or IV-F State Plans, such state law or regulation shall control.

B. The General Assembly declares that it is the policy of the Commonwealth to support the efforts of public agencies and charitable and community groups seeking to assist low-income Virginians in their efforts to become self-sufficient. To this end, the Department is designated as the state agency responsible for coordinating state efforts in this regard.

1997, cc. 575, 621, § 63.1-86.1; 2002, c. 747; 2011, cc. 4, 857.

**§ 63.2-601. Virginia Temporary Assistance for Needy Families Program; goals**

The goals of the Temporary Assistance for Needy Families Program are to:

1. Offer Virginians living in poverty the opportunity to achieve economic independence by removing barriers and disincentives to work and providing positive incentives to work;

2. Provide families living in poverty with the opportunities and work skills necessary for self-sufficiency;

3. Allow families living in poverty to contribute materially to their own self-sufficiency;

4. Set out the responsibilities of and expectations for recipients of public assistance and the government; and

5. Provide families living in poverty with the opportunity to obtain work experience through the Virginia Initiative for Employment Not Welfare (VIEW).

None of the provisions of this chapter shall be construed or interpreted to create any rights, causes of action, administrative claims or exemptions to the provisions of the Program, except as specifically provided in §§ 63.2-609, 63.2-613, and 63.2-618.

The Department of Small Business and Supplier Diversity and the Virginia Employment Commission shall assist the Department in the administration of the Program.

1994, cc. 858, 951, § 63.1-133.41; 1995, c. 450; 1996, cc. 589, 599; 2002, c. 747; 2013, c. 482.

**§ 63.2-601.1. Temporary Assistance for Needy Families Fund established**

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Temporary Assistance for Needy Families Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All donations and contributions to the Fund and such moneys as shall be appropriated by the General Assembly shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes set forth in this section. Moneys in the Fund shall be used to:

1. Supplement the assistance provided through the Department's administration of the Temporary Assistance for Needy Families block grant; and

2. Assist the Commonwealth in maximizing the amount of funds available to serve the stated purposes of the TANF program by leveraging individual, corporate, and charitable donations.

B. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner. Up to 10 percent of the Fund may be used to pay the Department's expenses in administering the Temporary Assistance for Needy Families Program.

C. The Department shall administer the Fund in accordance with the provisions of this section.

2011, cc. 4, 857.

**§ 63.2-601.2. Statewide Temporary Assistance for Needy Families (TANF) Program Funding Pool Program**

A. The Department shall develop a Statewide TANF Program Funding Pool Program (the Funding Pool Program) and shall allocate to the Funding Pool Program that portion of the TANF block grant to be awarded to service providers for expanded TANF programs, which shall include all funds not transferred to the Child Care and Development Block Grant or Social Services Block Grant or used for cash assistance, employment services, or child-care benefits through the TANF program, up to an amount equal to 12 percent of the total amount of the TANF block grant for that year.

B. Prior to submission of its proposed biennial budget to the Governor, the Department shall issue a Request for Proposals for use of available funds from the Funding Pool Program to service providers providing expanded TANF programs through a competitive process that is designed in a manner that ensures that all service providers in the Commonwealth, regardless of size or geographic location, are afforded the opportunity to apply for funds. All programs and services funded through the Funding Pool Program shall comply with all federal and state statutory and regulatory requirements and shall serve the stated purposes of the TANF program.

C. In developing the Request for Proposals, the Department shall include:

1. A long-range planning and priority-setting process to identify state and local service needs and avoid overlap or duplication of services. The planning and priority-setting process shall include opportunity for citizen participation and consideration of local and statewide service needs and priorities;

2. A competitive process, to include uniform eligibility criteria for service providers seeking funding and uniform application and selection procedures for comparable service categories;

3. Uniform oversight, administrative, and reporting requirements for service providers receiving funding through the Funding Pool Program; and

4. Uniform program evaluation criteria to determine the effectiveness and efficiency of comparable services funded through the Funding Pool Program.

D. The Department shall require all service providers applying for funding through the Funding Pool Program to submit a detailed proposal that includes a proposed budget, proposed program outcomes, and proposed program outcome measures. Following review of applications for funding received pursuant to this section, the Department shall provide a summary of the requests for funding and recommendations to the Governor and the General Assembly of the programs to be funded in the proposed biennial budget, the levels of funding recommended, and the rationale for such recommendations, and the Governor shall consider such recommendations in developing the proposed budget.

E. The Department shall require all providers receiving Funding Pool Program funds to report annually on the use of the funds and outcomes achieved and shall include such information in its annual report to the General Assembly.

2011, c. 531.

**§ 63.2-602. Eligibility for Temporary Assistance for Needy Families (TANF); penalty**

A. A person shall be eligible for Temporary Assistance for Needy Families if that person:

1. Has not attained the age of eighteen years, or, if regularly attending a secondary school or in the equivalent level of career and technical education, has not attained the age of nineteen years and is reasonably expected to complete his senior year of school prior to attaining age nineteen;

2. Is a resident of Virginia;

3. Is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece in a residence maintained by such relative or is in placement under conditions specified by the Board;

4. Is in need of public assistance; and

5. If under the age of eighteen years, is in compliance with compulsory school attendance laws (§ 22.1-254 et seq.) as described in § 63.2-606. Prior to imposing a sanction of benefits, the local department shall make reasonable efforts to discuss with the parent or caretaker, by personal contact that may include direct telephone contact, a plan to return the child to school. If such efforts fail, the local department shall mail a written advance notice of proposed action to the parent or caretaker advising that benefits may be reduced if the parent or caretaker fails to contact the local department to develop a plan to return the child to school.

B. An applicant for TANF shall:

1. Furnish, apply for or have an application made on his behalf, and on behalf of all children for whom assistance is being requested, for a social security account number to be used in the administration of the program;

2. Assign the Commonwealth any rights to support from any other person such applicant may have on his own behalf or on behalf of any other family member for whom the applicant is applying for or receiving aid, except for any support that accrued prior to the execution of the assignment;

3. Identify the parents of the child for whom aid is claimed, subject to the "good cause" provisions or exceptions in federal law or regulations. However, this requirement shall not apply if the child is in a foster care placement or if the local department determines, based upon the sworn statement of the applicant or recipient or of another person with knowledge of the circumstances, that the child was conceived as the result of incest or rape; and

4. Cooperate in (i) locating the parent of the child with respect to whom TANF is claimed, (ii) establishing the paternity of a child born out of wedlock with respect to whom TANF is claimed,

(iii) obtaining support payments for such applicant or recipient and for a child with respect to whom TANF is claimed, and (iv) obtaining any other payments or property due such applicant or recipient for such child.

Any applicant or recipient who intentionally misidentifies another person as a parent shall be guilty of a Class 5 felony.

C. Unless an exception to the requirement set forth in subdivision B 3 applies, the Department's Division of Child Support Enforcement shall proceed to determine parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20. If paternity is not established after six months of receipt of TANF, the case shall be reviewed to determine the reason that paternity has not been established. If paternity has not been established due to the caretaker relative's noncooperation, the local department may suspend the entire grant or the adult portion of the grant, subject to Board regulations.

D. TANF shall be provided to two-parent families on the same terms and conditions that TANF is provided to single-parent families.

Code 1950, § 63-141; 1954, c. 495; 1966, c. 665; 1968, cc. 578, 667, 668, 781, § 63.1-105; 1970, c. 721; 1974, c. 418; 1976, c. 215, § 63.1-105.1; 1982, c. 386; 1993, c. 167; 1994, cc. 188, 934; 1995, c. 450; 1996, c, 848, 857; 1999, c. 638; 2001, c. 483; 2002, c. 747; 2010, c. 250.

**§ 63.2-603. Eligibility for TANF; childhood immunizations**

An applicant for TANF shall provide verification that all eligible children not enrolled in school, a licensed family day home, or a licensed child day center, have received immunizations in accordance with § 32.1-46. However, if an eligible child has not received immunizations in accordance with § 32.1-46, verification shall be provided at the next scheduled redetermination of eligibility for TANF after initial eligibility is granted that the child has received at least one dose of each of the immunizations required by § 32.1-46 as appropriate for the child's age and that the child's physician or the local health department has developed a plan for completing the immunizations. Verification of compliance with the plan for completing the immunizations shall be presented at subsequent redeterminations of eligibility for TANF.

If necessary, the local department shall provide assistance to the TANF recipient in obtaining verification from immunization providers. No sanction may be imposed until the reason for the failure to comply with the immunization requirement has been identified and any barriers to accessing immunizations have been removed.

Failure by the recipient to provide the required verification of immunizations shall result in a reduction in the amount of monthly assistance received from the TANF program until the required verification is provided. The reduction shall be fifty dollars for the first child and twenty-five dollars for each additional child for whom verification is not provided.

Any person who becomes ineligible for TANF payments as a result of this provision shall nonetheless be considered a TANF recipient for all other purposes.

1994, c. 188, § 63.1-105.2; 2002, c. 747.

**§ 63.2-604. Eligibility for TANF; children born to TANF recipients**

Notwithstanding the provisions of § 63.2-602 and the TANF program regulations, the Board shall revise the schedule of TANF financial assistance to be paid to a family by eliminating the increment in TANF benefits to which a family would otherwise be eligible as a result of the birth of a child during the period of TANF eligibility or during the period in which the family or adult recipient is ineligible for TANF benefits pursuant to a penalty imposed by the Commissioner for failure to comply with benefit eligibility or child support requirements, subsequent to which the family or adult recipient is again eligible for benefits. The Board shall provide that a recipient family in which the mother gives birth to an additional child during the period of the mother's eligibility for TANF financial assistance, or during a temporary penalty period of ineligibility for financial assistance, may receive additional financial assistance only in the case of a general increase in the amount of TANF financial assistance that is provided to all TANF recipients. Applicants shall receive notice of the provisions of this section at the time of application for TANF. This section shall not apply to legal guardians, grandparents, or other persons in loco parentis who are not the biological or adoptive parents of the child.

There shall be no elimination of the increment in benefits for children born within ten months after the mother begins to receive TANF.

A single custodial parent who does not receive additional TANF financial assistance for the birth of a child pursuant to this section shall receive the total value of all child support payments due and collected for such child, and the value of such payments shall not be counted as income for the purposes of TANF eligibility and grant determination.

1995, c. 450, § 63.1-105.7; 2002, c. 747.

**§ 63.2-605. Eligibility for TANF; parolees and probationers who fail drug tests**

Upon receipt of notification from a probation or parole officer that a TANF caretaker under his supervision has failed a drug test, the local department shall provide future TANF cash benefits to such caretaker's assistance unit as protective or vendor payments to a third party payee for the benefit of the assistance unit. After twelve months, the local department may reinstate such caretaker as the payee for the assistance unit provided such caretaker has failed no subsequent drug test within such twelve-month period. Any caretaker who is reported to have failed a drug test under this section may appeal such report, including the validity of any test results, pursuant to §§ 63.2-517, 63.2-518 and 63.2-519.

1997, c. 526, § 63.1-105.8; 2002, c. 747.

**§ 63.2-606. Eligibility for TANF; school attendance**

In order to be eligible for TANF, members of the assistance unit, including minor custodial parents, shall be in compliance with compulsory school attendance laws (§ 22.1-254 et seq.). The Board shall adopt regulations to implement the provisions of this section, including procedures for local departments to (i) receive notification from local school divisions of students who are truant and (ii) assist families in noncompliance to achieve compliance. An applicant for or recipient of TANF or any member of his assistance unit who has been found guilty under § 22.1-263 shall not be eligible for TANF financial assistance until in compliance with compulsory school attendance laws. Any person who becomes ineligible for TANF financial assistance as a result of this section shall nonetheless be considered a TANF recipient for all other purposes.

1995, c. 450, § 63.1-105.4; 2002, c. 747.

**§ 63.2-607. Eligibility for TANF; minor parent residency**

A. Except as provided in subsection B, an unemancipated minor custodial parent may receive TANF for himself and his child only if the individual and his child reside in the home maintained by his parent or person standing in loco parentis. For purposes of TANF eligibility determination, a minor who receives government-provided public assistance is not considered emancipated unless married.

B. The provisions of subsection A shall not apply if:

1. The individual has no parent or person standing in loco parentis who is living or whose whereabouts are known;

2. The local department determines that the physical or emotional health or safety of the individual or his dependent child would be jeopardized if the individual and dependent child lived in the same residence with the individual's parent or the person standing in loco parentis for the individual; or

3. The local department otherwise determines, in accordance with Board regulations, that there is good cause for waiving the requirements of subsection A.

C. If the individual and his dependent child are not required to live with the individual's parent or the person standing in loco parentis for the individual, the local department shall assist the individual in locating an appropriate adult supervised supportive living arrangement taking into consideration the needs and concerns of the minor and thereafter shall require that the individual and his child reside in such living arrangement or an alternative appropriate arrangement as a condition of the continued receipt of TANF. If the local department is unable, after making diligent efforts, to locate any such appropriate living arrangement, it shall provide case management and other social services consistent with the best interests of the individual and child who live independently.

1995, c. 450, § 63.1-105.6; 2002, c. 747.

**§ 63.2-608. Virginia Initiative for Employment Not Welfare (VIEW)**

A. The Department shall establish and administer the Virginia Initiative for Employment Not Welfare (VIEW) to reduce long-term dependence on welfare, emphasize personal responsibility, and enhance opportunities for personal initiative and self-sufficiency by promoting the value of work. The Department shall endeavor to develop placements for VIEW participants that will enable participants to develop job skills that are likely to result in independent employment and that take into consideration the proficiency, experience, skills, and prior training of a participant.

VIEW shall recognize clearly defined responsibilities and obligations on the part of public assistance recipients and shall include a written agreement of personal responsibility requiring parents to participate in work activities while receiving TANF, earned-income disregards to reduce disincentives to work, and a limit on TANF financial assistance.

VIEW shall require all able-bodied recipients of TANF who do not meet an exemption to participate in a work activity. VIEW shall require eligible TANF recipients to participate in unsubsidized, partially subsidized or fully subsidized employment or other allowable TANF work activity as defined by federal law and enter into an agreement of personal responsibility.

B. To the maximum extent permitted by federal law, and notwithstanding other provisions of Virginia law, the Department and local departments may, through applicable procurement laws and regulations, engage the services of public and private organizations to operate VIEW and to provide services incident to such operation.

C. All VIEW participants shall be under the direction and supervision of a case manager.

D. The Department shall ensure that participants are assigned to one of the following work activities within 90 days after the approval of TANF assistance:

1. Unsubsidized private-sector employment;

2. Subsidized employment, as follows:

a. The Department shall conduct a program in accordance with this section that shall be known as the Full Employment Program (FEP). FEP replaces TANF with subsidized employment. Persons not able to find unsubsidized employment who are otherwise eligible for TANF may participate in FEP unless exempted by this chapter. FEP shall assign participants to subsidized wage-paying private-sector jobs designed to increase the participants' self-sufficiency and improve their competitive position in the workforce.

b. Participants in FEP shall be placed in full-time employment when appropriate and shall be paid by the employer at an hourly rate not less than the federal or state minimum wage, whichever is higher. At no point shall a participant's spendable income received from wages and tax credits be less than the value of TANF received prior to the work placement.

c. Every employer subject to the Virginia unemployment insurance tax shall be eligible for assignment of FEP participants, but no employer shall be required to utilize such participants. Employ-

ers shall ensure that jobs made available to FEP participants are in conformity with § 3304(a)(5) of the Federal Unemployment Tax Act. FEP participants cannot be used to displace regular workers.

d. FEP employers shall:

(i) Endeavor to make FEP placements positive learning and training experiences;

(ii) Provide on-the-job training to the degree necessary for the participants to perform their duties;

(iii) Pay wages to participants at the same rate that they are paid to other employees performing the same type of work and having similar experience and employment tenure;

(iv) Provide sick leave, holiday and vacation benefits to participants to the same extent and on the same basis that they are provided to other employees performing the same type of work and having similar employment experience and tenure;

(v) Maintain health, safety and working conditions at or above levels generally acceptable in the industry and no less than those in which other employees perform the same type of work;

(vi) Provide workers' compensation coverage for participants;

(vii) Encourage volunteer mentors from among their other employees to assist participants in becoming oriented to work and the workplace; and

(viii) Sign an agreement with the local department outlining the employer requirements to participate in FEP. All agreements shall include notice of the employer's obligation to repay FEP reimbursements in the event the employer violates FEP rules.

e. As a condition of FEP participation, employers shall be prohibited from discriminating against any person, including program participants, on the basis of race, color, sex, national origin, religion, age, or disability;

3. Part-time or temporary employment;

4. Community work experience, as follows:

a. The Department and local departments shall work with other state, regional and local agencies and governments in developing job placements that serve a useful public purpose as provided in § 482(f) of the Social Security Act, as amended. Placements shall be selected to provide skills and serve a public function. VIEW participants shall not displace regular workers.

b. The number of hours per week for participants shall be determined by combining the total dollar amount of TANF and food stamps and dividing by the minimum wage with a maximum of a work week of 32 hours, of which up to 12 hours of employment-related education and training may substitute for work experience employment; or

5. Any other allowable TANF work activity as defined by federal law.

E. Notwithstanding the provisions of subsections A and D, if a local department determines that a VIEW participant is in need of job skills and would benefit from immediate job skills training, it may place the participant in a program preparing individuals for a high school equivalency examination approved by the Board of Education, a career and technical education program targeted at skills required for particular employment opportunities, or an apprenticeship program developed by the local department in accordance with requirements established by the Department. Eligible participants include those with problems related to obtaining and retaining employment, such as participants (i) with less than a high school education, (ii) whose reading or math skills are at or below the eighth grade level, (iii) who have not retained a job for a period of at least six months during the prior two years, or (iv) who are in a treatment program for a substance abuse problem or are receiving services through a family violence treatment program. The VIEW participant may continue in a high school equivalency examination preparation program, career and technical education program, or apprenticeship program for as long as the local department determines he is progressing satisfactorily and to the extent permitted by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), as amended.

F. Participants may be reevaluated after a period determined by the local department and reassigned to another work component. In addition, the number of hours worked may be reduced by the local department so that a participant may complete additional training or education to further his employability.

G. Local departments shall be authorized to sanction parents up to the full amount of the TANF grant for noncompliance, unless good cause exists.

H. VIEW participants shall not be assigned to projects that require that they travel unreasonable distances from their homes or remain away from their homes overnight without their consent.

Any injury to a VIEW participant arising out of and in the course of community work experience shall be covered by the participant's existing Medicaid coverage. If a community work experience participant is unable to work due to such an accident, his status shall be reviewed to determine whether he is eligible for an exemption from the limitation on TANF financial assistance.

A community work experience participant who becomes incapacitated for 30 days or more shall be eligible for TANF financial assistance for the duration of the incapacity, if otherwise eligible.

The Board shall adopt regulations providing for the accrual of paid sick leave or other equivalent mechanism for community work experience participants.

1994, cc. 858, 951, § 63.1-133.49; 1995, c. 450; 1996, c. 1023; 1999, c. 759; 2000, cc. 483, 491; 2001, c. 483; 2002, c. 747; 2003, cc. 428, 467; 2005, c. 472; 2007, c. 568; 2014, c. 84; 2016, c. 101.

**§ 63.2-609. VIEW exemptions**

The following TANF recipients shall be exempt from mandatory participation in VIEW and shall remain eligible for TANF financial assistance:

1. Any individual, including all minor caretakers, under 16 years of age;

2. Any individual at least 16, but no more than 19 years of age, who is enrolled full-time in elementary or secondary school, including career and technical education programs. The career and technical education program must be equivalent to secondary school. Whenever feasible, such recipients should participate in summer work;

3. Any individual who is unable to participate because of a temporary medical condition that is preventing employment or training, as determined by a physician or other qualified medical professional and certified by a written medical statement. Such an exemption shall be reevaluated every 60 days to determine whether the person is still exempt;

4. Any individual who is disabled, as determined by receipt of Social Security Disability Benefits or Supplemental Security Income;

5. Any individual 60 years of age or older;

6. Any individual who is the sole caregiver of another member of the household who is disabled as determined by receipt of Social Security Disability Benefits or Supplemental Security Income or who is incapacitated by another condition as determined by the Board and whose presence is essential for the care of the other member on a substantially continuous basis;

7. A parent or caretaker-relative of a child under 12 months of age who personally provides care for the child. A parent or caretaker-relative exempt from mandatory participation in VIEW pursuant to this subdivision shall be exempt for a period of no more than 12 months. Months during which a parent or caretaker-relative is exempt may be consecutive or nonconsecutive. A parent of a child not considered part of the TANF public assistance unit under § 63.2-604 may be granted a temporary exemption of not more than six weeks after the birth of such child.

In a TANF-UP case, both parents shall be referred for participation unless one meets an exemption; only one parent can be exempt. If both parents meet an exemption criterion, they shall decide who will be referred for participation.

1994, cc. 858, 951, §§ 63.1-133.43, 63.1-133.48; 1995, c. 450; 2001, c. 483; 2002, cc. 81, 747; 2007, c. 568; 2011, c. 426.

**§ 63.2-610. Participation in VIEW; coordinated services**

A. In administering VIEW, the Department shall ensure that local departments provide delivery and coordination of all services through intensive case management. VIEW participants shall be referred to a case manager. The case manager shall fully explain VIEW to the participant and shall provide the participant with written materials explaining VIEW.

B. The Department shall assist local departments in improving the delivery of services, including intensive case management, through the utilization of public, private and nonprofit organizations, to the extent permissible under federal law.

C. The Department shall be responsible for the coordination of the intensive case management. Job finding and job matching leading to independent employment shall be facilitated by the Virginia Employment Commission and the Department of Small Business and Supplier Diversity.

D. The Secretary of Health and Human Resources, assisted by the Secretary of Commerce and Trade, shall prepare and maintain an annual plan for coordinating and integrating all appropriate services in order to promote successful outcomes. The plan shall encourage the use of local and regional service providers and permit a variety of methods of providing services. Emphasis shall be placed on coordinating and integrating career counseling, job development, job training and skills, job placement, and academic and technical education. Public and private institutions of higher education and other agencies which offer similar or related services shall be invited to participate as fully as possible in developing, implementing and updating the annual coordination plan.

E. The Secretary of Health and Human Resources shall:

1. Increase public awareness of the federal earned income credit and encourage families who may be eligible to apply for this tax credit;

2. Pursue aggressive child-support initiatives as established by the General Assembly;

3. Work with community providers to develop adoption, education, family planning, marriage, parenting, and training options for Program participants;

4. Increase public awareness of the tax advantages of relocating one's residence in order to secure employment;

5. Provide leadership for the development of community work experience opportunities in VIEW;

6. Develop strategies to educate, assist and stimulate employers to hire participants and to provide community work experience opportunities, in consultation with representatives of employers and relevant public and private agencies on the state and local level; and

7. Provide technical assistance to local departments to assist them in working with employers in the community to develop job and community work experience opportunities for participants.

1994, cc. 858, 951, § 63.1-133.45; 1995, c. 450; 1996, cc. 589, 599; 1999, cc. 840, 855; 2002, c. 747; 2013, c. 482.

**§ 63.2-611. Case management; support services; transitional support services**

A. The Commissioner, through the local departments, with such funds as appropriated, shall offer families participating in VIEW intensive case management services throughout the family's participation in VIEW. Case management services shall include initial assessment of the full range of

services that will be needed by each family including testing and evaluation, development of the individualized agreement of personal responsibility, and periodic reassessment of service needs and the agreement of personal responsibility. It shall be the goal of the Department to have a statewide intensive case management ratio not higher than the statewide average ratio in Title IV-F of the Social Security Act Job Opportunities and Basic Skills Training Program State Plan as the ratio existed on July 1, 1995.

B. Local departments are authorized to provide services to VIEW families throughout the family's participation in VIEW subject to regulations adopted by the Board, including:

1. Child care for the children of participants if:

a. The participant is employed and child-care services are required to enable the continued employment of the participant;

b. Child-care services are required to enable a participant to receive job placement, job training or education services; or

c. The participant is otherwise eligible for child care pursuant to Board regulations.

2. Transportation that will enable parental employment or participation in services required by the agreement of personal responsibility.

3. Job counseling, education and training, and job search assistance consistent with the purposes of VIEW.

4. Medical assistance.

C. A participant whose TANF financial assistance is terminated, either voluntarily or involuntarily, shall receive the following services for up to twelve months after termination, if needed:

1. Assistance with child care if such assistance enables the individual to work;

2. Assistance with transportation, if such transportation enables the individual to work;

3. Medical assistance, including transitional medical assistance for families with a working parent who becomes ineligible for TANF financial assistance because of increased earnings according to policies of the Virginia Department of Medical Assistance Services; and

4. Financial assistance of $50 per month, if the participant is employed and is working at least 30 hours per week or more at the time of TANF closure and remains employed and continues to work at least 30 hours per week or more.

D. The Department or local departments may purchase or otherwise acquire motor vehicles from the centralized fleet of motor vehicles controlled by the Commissioner of Highways under Article 7 (§ 2.2-1173 et seq.) of Chapter 11 of Title 2.2 and sell or otherwise transfer such vehicles to TANF recipients or former recipients. Purchases, sales, and other transfers of vehicles under this subsection shall not be subject to the provisions of the Virginia Public Procurement Act (§ 2.2-

4300 et seq.), or the provisions of §§ 2.2-1124, 2.2-1153, 2.2-1156, and 2.2-1177 relating to the sale, purchase, and transfer of surplus motor vehicles and other surplus state property.

E. Nothing in this section shall be construed or interpreted to create a cause of action or administrative claim based upon a right or entitlement to any specific services or an exemption or waiver from any provision of VIEW.

1994, cc. 858, 951, § 63.1-133.46; 1995, c. 450; 1999, c. 910; 2002, c. 747; 2007, c. 568.

**§ 63.2-612. Time limit on the receipt of TANF**

Unless otherwise exempt, VIEW participants and their families may receive TANF financial assistance for a maximum of 24 months only, subject to § 63.2-613. VIEW participants and their families may receive TANF financial assistance, if otherwise eligible, after a subsequent period of 24 months. However, the 24-month period of ineligibility shall not apply when a child is removed from the parents' home as the result of a child protective services report or complaint as defined in regulations promulgated by the Board and is placed with a relative. In such cases, the relative with whom the child is placed shall be eligible to receive TANF financial assistance immediately and without waiting for the 24-month period of ineligibility to run.

The local department shall notify a VIEW participant and his family that his TANF financial assistance is scheduled to be terminated as provided in this section. Notice shall be given 60 days prior to such termination and shall inform the VIEW participant and his family of the exception regulations adopted by the Board and the procedure to be followed by the VIEW participant and his family if he believes that he is entitled to an extension of benefits.

1994, cc. 858, 951, § 63.1-133.50; 1995, c. 450; 2002, c. 747; 2007, c. 568; 2008, cc. 132, 564.

**§ 63.2-613. Hardship exceptions**

The Board shall adopt regulations providing exceptions to the time limitations of this chapter in cases of hardship. In adopting regulations, the Board shall address circumstances:

1. Where a VIEW participant has been actively seeking employment by engaging in job-seeking activities required pursuant to § 60.2-612 and is unable to find employment;

2. Where factors relating to job availability may be unfavorable;

3. Where the VIEW participant loses his job as a result of factors not related to his job performance; and

4. Where extension of benefits for up to one year will enable a participant to complete employment-related education or training.

1994, cc. 858, 951, § 63.1-133.51; 1995, c. 450; 2002, c. 747.

**§ 63.2-614. Financial eligibility**

A. Pursuant to regulations adopted by the Board, the parent of an eligible child or children who is married to a person not the parent of the child or children shall not be eligible for TANF if the

parent's spouse's income, when deemed available to the family unit according to federal regulations, in and of itself, exceeds the state eligibility standard for such aid. However, eligibility for the child or children shall be considered by counting the income of such parent and child or children, and any portion of the parent's spouse's income that exceeds 150 percent of the federal poverty level for the spouse and parent. If the income of the parent's spouse that is deemed available does not, in and of itself, exceed the state eligibility standard for TANF, none of the spouse's income shall be counted as available to the family unit, and eligibility shall be determined considering only the income, if any, of the parent and the child or children. If the parent fails or refuses to cooperate with the Department's Division of Child Support Enforcement in the pursuit of child support, the income of the parent's current spouse shall be counted in accordance with Title IV-A federal regulations at 45 C.F.R. 233.20(a) (3) (xiv) in determining eligibility for TANF for the parent's child or children.

B. Program participants shall be eligible for the income disregards and resource exclusions in § 63.2-505.

C. VIEW participants and their families shall also be eligible for the following income disregards and resource exclusions:

1. To reward work, a VIEW participant and his family who have earned income from any source other than VIEW, may continue to receive TANF financial assistance for up to two years from the date that both parties initially sign the agreement. However, in no event shall the TANF payment when added to the earned income exceed such percentage of the federal poverty level established by the Commissioner, and if necessary any TANF payment shall be reduced so that earned income plus the TANF payment equals such percentage of the federal poverty level established by the Commissioner.

2. The fair market value, not to exceed $7,500, of one operable motor vehicle per family.

Code 1950, § 63-141; 1954, c. 495; 1966, c. 665; 1968, cc. 578, 667, 668, 781, § 63.1-105; 1970, c. 721; 1974, c. 418; 1982, c. 386; 1993, c. 167; 1994, cc. 188, 858, 951, § 63.1-133.47; 1995, c. 450; 1996, c. 857; 1999, c. 638; 2001, c. 483; 2002, c. 747.

**§ 63.2-615. Payment of tuition and other expenses of public assistance recipients enrolled in skill development training programs**

The Board may authorize the payment of tuition fees, transportation costs or other necessary or incidental expenses for obtaining skill development training or retraining for qualified public assistance recipients. The Board may, by regulation, prescribe necessary requisites and conditions under which such payments may be made. Such assistance shall be in addition to any other public assistance for which such recipient may be eligible and shall not affect his entitlement thereto.

Code 1950, § 63-110.1; 1968, c. 586, § 63.1-96.1; 2002, c. 747.

**§ 63.2-616. Provision of public assistance and social services**

Local departments may combine community resources to assist the families of persons who may be in need because of the limitations on TANF financial assistance and may arrange for appropriate care of needy families where the limitation on TANF financial assistance as a result of the birth of an additional child or the two-year limit on TANF financial assistance is executed. Public assistance and social services may be provided that include, but are not limited to, help for families in obtaining donated food and clothing, continuation of food stamps for adults and children who are otherwise eligible, child care, and Medicaid coverage for adults and children who are otherwise eligible for Medicaid.

1994, cc. 858, 951, § 63.1-133.52; 1995, c. 450; 2002, c. 747.

**§ 63.2-617. Diversionary cash assistance**

The Board shall adopt regulations to enable TANF -- eligible applicants meeting certain criteria to receive at one time the maximum TANF cash assistance that the applicant would otherwise receive for a period up to 120 days. An individual may receive diversionary TANF cash assistance only one time in a 12-month period and, in so doing, waives his eligibility for TANF for a period of up to 160 days. Diversionary assistance shall be used to divert the family from receiving ongoing TANF cash assistance by providing assistance for one-time emergencies.

1995, c. 450, § 63.1-105.3; 2002, c. 747; 2009, cc. 61, 547.

**§ 63.2-618. Notice and appeal**

A participant aggrieved by the decision of a local board granting, denying, changing or discontinuing public assistance may appeal such decision pursuant to § 63.2-517. If a hearing request is received prior to the effective date of any proposed change in benefit status, a participant appealing such change shall have the right to continued direct payment of TANF benefits pending final administrative action on such appeal.

1994, cc. 858, 951, § 63.1-133.53; 1995, c. 450; 2002, c. 747.

**§ 63.2-619. Repealed**

Repealed by Acts 2016, c. 23, cl. 2.

**§ 63.2-620. Child care services for TANF and low-income families**

The Department shall identify strategies for Virginia to obtain the maximum amount of federal funds available for child care services for TANF recipients and families whose incomes are at or below 185 percent of the federal poverty level. The Department shall provide an annual report on these strategies to the chairmen of the House Committees on Appropriations and Health, Welfare and Institutions and Senate Committees on Finance and Rehabilitation and Social Services by December 15.

2001, c. 184, § 63.1-105.9; 2002, c. 747.

**§ 63.2-621. Restrictions on use of TANF cash assistance**

Recipients of TANF benefits pursuant to this chapter shall not access TANF cash benefits through an electronic benefit transaction (i) for the purchase of alcoholic beverages, tobacco products, lottery tickets, or sexually explicit visual materials as defined in § 18.2-374.1; (ii) in any transaction in any (a) government store established for the sale of alcoholic beverages, (b) establishment in which pari-mutuel wagering or charitable gaming is conducted, or (c) establishment in which tattooing or body-piercing, as defined in § 54.1-700, is performed for hire or consideration; or (iii) in any establishment that provides adult-oriented entertainment in which performers or other individuals connected with the business appear nude or partially nude.

2013, cc. 160, 733.

## Chapter 7 - ECONOMIC EMPLOYMENT IMPROVEMENT PROGRAM FOR DISADVANTAGED PERSONS [Repealed]

### §§ 63.2-700 through 63.2-702. Repealed

Repealed by Acts 2003, c. 428.

## Chapter 7.1 - FAITH-BASED AND COMMUNITY INITIATIVES

### § 63.2-703. Faith-based and community initiatives; responsibilities of Department

A. The General Assembly finds that faith-based, volunteer, private and community organizations make significant contributions to the welfare of our society and constitute an underutilized and underrepresented reservoir of assistance for social programs, and special efforts to increase utilization of faith-based, volunteer, private and community organizations will enhance the Commonwealth's ability to carry out human welfare programs. To carry out these initiatives, the Department of Social Services shall have the following responsibilities:

1. Lead and facilitate meetings as necessary, with faith-based, volunteer, private and community organizations for the purpose of sharing information to help carry out human welfare programs in Virginia;

2. Encourage conferences and meetings at the community level for faith-based, volunteer, private and community organizations, as needed;

3. Provide procurement and funding information to faith-based, volunteer, private and community organizations, as needed;

4. Provide information regarding faith-based and community initiatives and other information the Department may deem appropriate, to faith-based, volunteer, private and community organizations, and other state agencies whose missions may be enhanced by increased awareness of such initiatives and information;

5. Encourage the development and maintenance of a statewide network of local liaisons to assist in the dissemination of information and assistance;

6. Develop a statewide list of available faith-based, volunteer, private and community organizations. Such statewide list shall be made available to the public through the Department's website;

7. Obtain information concerning faith-based, volunteer, private and community organizations in other states;

8. Coordinate offers of assistance from faith-based organizations during natural disasters; and

9. Perform such other duties as the Department deems appropriate.

B. Nothing in this section shall imply or be inferred to mean that additional federal or state funds will be available for these purposes or that contractual preferences will be given to such organizations other than past or potential performance standards utilized under the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

2002, c. 326, § 63.1-133.59; 2006, cc. 142, 386; 2016, c. 23.

## Chapter 8 - OTHER GRANTS OF PUBLIC ASSISTANCE

### § 63.2-800. Repealed

Repealed by Acts 2012, cc. 803 and 835, cl. 61, effective July 1, 2013.

### § 63.2-801. Food stamp program

The Board is authorized, in accordance with the federal Food Stamp Act, to implement a food stamp program in which each political subdivision in the Commonwealth shall participate. Such program shall be administered in conformity with the Board regulations.

1974, c. 504, § 63.1-25.2; 1975, c. 311; 1981, c. 21; 2002, c. 747.

### § 63.2-802. Eligibility for general relief

If a local board has exercised its option to establish a program of general relief, a person shall be eligible for such components of the general relief program as the locality chooses to provide if he is in need of general relief. The establishment of and continued participation in such general relief program shall be optional with the local board. Nothing contained in this section shall restrict the authority of a local board under § 63.2-314. No person shall be deemed to be in need of general relief, however, if he fails to accept available employment which is appropriate to his physical and mental abilities and training, taking into consideration his home and family responsibilities which would affect his availability for employment. Prepaid funeral expenses, which do not exceed an amount established by the Board, shall not be considered a financial asset in determining a person's eligibility for general relief.

Code 1950, § 63-205; 1968, cc. 578, 666, § 63.1-106; 1972, c. 768; 1977, c. 241; 1980, cc. 18, 20; 2002, c. 747.

### § 63.2-803. Payment for legal services in claims for Supplemental Security Income

The Commissioner shall establish an advocacy project to assist recipients of general relief or children entrusted or committed to foster care who may be eligible for federal Supplemental Security Income (SSI) benefits in obtaining such benefits. Local departments may determine and refer appropriate potential SSI claimants to attorneys, or advocates working under the supervision of an attorney, for representation under this project. This project shall provide for disbursements to any such attorney or advocate upon receipt of a favorable decision in such referred claims.

Such disbursements shall be in an amount determined by the Board to be sufficient to ensure prompt and adequate representation of such recipients. This amount shall not exceed the lesser of the recoupment for state and local assistance paid, as provided by the Social Security Act, 42 U.S.C. § 1383 (g), as amended, or twenty-five percent of the maximum federal back-due SSI grant payable to an individual.

Such disbursement shall be made upon submission by the attorney of a petition and a copy of the favorable decision. Petitions must be presented within sixty days of the favorable Social Security Administration decision.

The Board, in consultation with the Virginia State Bar, shall adopt regulations necessary to implement this section.

1992, c. 170, § 63.1-89.1; 2002, c. 747.

**§ 63.2-804. Eligibility to receive convict-made dentures**

Any person who is a recipient of dental care provided by the Department of Health is eligible to receive, if so prescribed, dentures manufactured in a state correctional facility.

1972, c. 54, § 63.1-110.1; 2002, c. 747.

**§ 63.2-805. Home Energy Assistance Program; report; survey**

A. The General Assembly declares that it is the policy of this Commonwealth to support the efforts of public agencies, private utility service providers, and charitable and community groups seeking to assist low-income Virginians in meeting their residential energy needs. To this end, the Department is designated as the state agency responsible for coordinating state efforts in this regard.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Home Energy Assistance Fund, hereinafter the "Fund." Moneys in the Fund shall be used to:

1. Supplement the assistance provided through the Department's administration of the federal Low-Income Home Energy Assistance Program Block Grant; and

2. Assist the Commonwealth in maximizing the amount of federal funds available under the Low-Income Home Energy Assistance Program and the Weatherization Assistance Program by providing funds to comply with fund-matching requirements, and by means of leveraging in accordance with the rules set by the Home Energy Assistance Program.

The Fund shall be established on the books of the Comptroller. The Fund shall consist of donations and contributions to the Fund and such moneys as shall be appropriated by the General

Assembly. Interest earned on money in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes set forth in this section. The State Treasurer shall make expenditures and disbursements from the Fund on warrants issued by the Comptroller upon written request signed by the Commissioner. Up to twelve percent of the Fund may be used to pay the Department's expenses in administering the Home Energy Assistance Program.

C. The Department shall establish and operate the Home Energy Assistance Program. In administering the Home Energy Assistance Program, it shall be the responsibility of the Department to:

1. Administer distributions from the Fund;

2. Lead and facilitate meetings with the Department of Housing and Community Development, the Department of Mines, Minerals and Energy, and other agencies of the Commonwealth, as well as any nonstate programs that elect to participate in the Home Energy Assistance Program, for the purpose of sharing information directed at alleviating the seasonal energy needs of low-income Virginians, including needs for weatherization assistance services;

3. Collect and analyze data regarding the amounts of energy assistance provided through the Department, categorized by fuel type in order to identify the unmet need for energy assistance in the Commonwealth;

4. Develop and maintain a statewide list of available private and governmental resources for low-income Virginians in need of energy assistance; and

5. Report annually to the Governor and the General Assembly on or before October 1 of each year through October 1, 2007, and biennially thereafter, on the effectiveness of low-income energy assistance programs in meeting the needs of low-income Virginians. In preparing the report, the Department shall:

a. Conduct a survey biennially in each year that the report is due to the General Assembly that shall collect information regarding the extent to which the Commonwealth's efforts in assisting low-income Virginians are adequate and are not duplicative of similar services provided by utility services providers, charitable organizations and local governments;

b. Obtain information on energy programs in other states; and

c. Obtain necessary information from the Department of Housing and Community Development, the Department of Mines, Minerals and Energy, and other agencies of the Commonwealth, as well as any nonstate programs that elect to participate in the Home Energy Assistance Program, to complete the biennial survey and to compile the required report. The Department of Housing and Community Development, the Department of Mines, Minerals and Energy, and other agencies of the Commonwealth, as well as any nonstate programs that elect to participate in the Home Energy Assistance Program, shall provide the necessary information to the Department.

The Department is authorized to assume responsibility for administering all or any portion of any private, voluntary low-income energy assistance program upon the application of the administrator thereof, on such terms as the Department and such administrator shall agree and in accordance with applicable law and regulations. If the Department assumes administrative responsibility for administering such a voluntary program, it is authorized to receive funds collected through such voluntary program and distribute them through the Fund.

D. Local departments may, to the extent that funds are available, promote interagency cooperation at the local level by providing technical assistance, data collection and service delivery.

E. Subject to Board regulations and to the availability of state or private funds for low-income households in need of energy assistance, the Department is authorized to:

1. Receive state and private funds for such services; and

2. Disburse funds to state agencies, and vendors of energy services, to provide energy assistance programs for low-income households.

F. Actions of the Department relating to the review, allocation and awarding of benefits and grants shall be exempt from the provisions of Article 3 (§ 2.2-4018 et seq.) and Article 4 (§ 2.2-4024 et seq.) of Chapter 40 of the Administrative Process Act (§ 2.2-4000 et seq.).

G. No employee or former employee of the Department shall divulge any information acquired by him in the performance of his duties with respect to the income or assistance eligibility of any individual or household obtained in the course of administering the Home Energy Assistance Program, except in accordance with proper judicial order. The provisions of this section shall not apply to (i) acts performed or words spoken or published in the line of duty under law; (ii) inquiries and investigations to obtain information as to the implementation of this chapter by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information shall be privileged; or (iii) the publication of statistics so classified as to prevent the identification of any individual or household.

2001, c. 676, §§ 63.1-336, 63.1-337, 63.1-338, 63.1-339, 63.1-340, 63.1-341, 63.1-342, 63.1-343, 63.1-339; 2002, cc. 243, 747; 2007, c. 312; 2009, c. 127.

# Subtitle III - SOCIAL SERVICES PROGRAMS

## Chapter 9 - FOSTER CARE

### § 63.2-900. Accepting children for placement in homes, facilities, etc., by local boards

A. Pursuant to § 63.2-319, a local board shall have the right to accept for placement in suitable family homes, children's residential facilities or independent living arrangements, subject to the supervision of the Commissioner and in accordance with regulations adopted by the Board, such persons under 18 years of age as may be entrusted to it by the parent, parents or guardian, com-

mitted by any court of competent jurisdiction, or placed through an agreement between it and the parent, parents or guardians where legal custody remains with the parent, parents, or guardians.

The Board shall adopt regulations for the provision of foster care services by local boards, which shall be directed toward the prevention of unnecessary foster care placements and towards the immediate care of and permanent planning for children in the custody of or placed by local boards and that shall achieve, as quickly as practicable, permanent placements for such children. The local board shall first seek out kinship care options to keep children out of foster care and as a placement option for those children in foster care, if it is in the child's best interests, pursuant to § 63.2-900.1. In cases in which a child cannot be returned to his prior family or placed for adoption and kinship care is not currently in the best interests of the child, the local board shall consider the placement and services that afford the best alternative for protecting the child's welfare. Placements may include but are not limited to family foster care, treatment foster care and residential care. Services may include but are not limited to assessment and stabilization, diligent family search, intensive in-home, intensive wraparound, respite, mentoring, family mentoring, adoption support, supported adoption, crisis stabilization or other community-based services. The Board shall also approve in foster care policy the language of the agreement required in § 63.2-902. The agreement shall include at a minimum a Code of Ethics and mutual responsibilities for all parties to the agreement.

Within 30 days of accepting for foster care placement a person under 18 years of age whose father is unknown, the local board shall request a search of the Putative Father Registry established pursuant to Article 7 (§ 63.2-1249 et seq.) of Chapter 12 to determine whether any man has registered as the putative father of the child. If the search results indicate that a man has registered as the putative father of the child, the local board shall contact the man to begin the process to determine paternity.

The local board shall, in accordance with the regulations adopted by the Board and in accordance with the entrustment agreement or other order by which such person is entrusted or committed to its care, have custody and control of the person so entrusted or committed to it until he is lawfully discharged, has been adopted or has attained his majority.

Whenever a local board places a child where legal custody remains with the parent, parents or guardians, the board shall enter into an agreement with the parent, parents or guardians. The agreement shall specify the responsibilities of each for the care and control of the child.

The local board shall have authority to place for adoption, and to consent to the adoption of, any child properly committed or entrusted to its care when the order of commitment or entrustment agreement between the parent or parents and the agency provides for the termination of all parental rights and responsibilities with respect to the child for the purpose of placing and consenting to the adoption of the child.

The local board shall also have the right to accept temporary custody of any person under 18 years of age taken into custody pursuant to subdivision B of § 16.1-246 or § 63.2-1517. The placement of a child in a foster home, whether within or without the Commonwealth, shall not be for the purpose of adoption unless the placement agreement between the foster parents and the local board specifically so stipulates.

B. Prior to the approval of any family for placement of a child, a home study shall be completed and the prospective foster or adoptive parents shall be informed that information about shaken baby syndrome, its effects, and resources for help and support for caretakers is available on a website maintained by the Department as prescribed in regulations adopted by the Board.

C. Prior to placing any such child in any foster home or children's residential facility, the local board shall enter into a written agreement with the foster parents, pursuant to § 63.2-902, or other appropriate custodian setting forth therein the conditions under which the child is so placed pursuant to § 63.2-902. However, if a child is placed in a children's residential facility licensed as a temporary emergency shelter, and a verbal agreement for placement is secured within eight hours of the child's arrival at the facility, the written agreement does not need to be entered into prior to placement, but shall be completed and signed by the local board and the facility representative within 24 hours of the child's arrival or by the end of the next business day after the child's arrival.

D. Within 72 hours of placing a child of school age in a foster care placement, as defined in § 63.2-100, the local social services agency making such placement shall, in writing, (i) notify the principal of the school in which the student is to be enrolled and the superintendent of the relevant school division or his designee of such placement, and (ii) inform the principal of the status of the parental rights.

If the documents required for enrollment of the foster child pursuant to § 22.1-3.1, 22.1-270 or 22.1-271.2, are not immediately available upon taking the child into custody, the placing social services agency shall obtain and produce or otherwise ensure compliance with such requirements for the foster child within 30 days after the child's enrollment.

Code 1950, § 63-73; 1952, c. 409; 1960, c. 331; 1968, cc. 466, 578, § 63.1-56; 1975, cc. 248, 406; 1977, cc. 559, 562, 634, 645; 1978, c. 734; 1984, c. 734; 1986, c. 281; 1991, c. 34; 1994, c. 865; 1999, c. 889; 2002, c. 747; 2004, c. 70; 2005, cc. 343, 653; 2006, c. 360; 2008, cc. 241, 308; 2010, c. 551; 2011, cc. 9, 170; 2015, c. 531.

**§ 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 who is eligible to become a kinship foster parent.

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 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.

2006, c. 360; 2012, c. 568; 2014, c. 257; 2016, c. 25.

**§ 63.2-900.2. Placement of sibling groups; visitation**

All reasonable steps shall be taken to place siblings entrusted to the care of a local board or licensed child-placing agency, committed to the care of a local board or agency by any court of competent jurisdiction, or placed with a local board or public agency through an agreement between a local board or a public agency and the parent, parents, or guardians, where legal custody remains with the parent, parents, or guardian, together in the same foster home.

Where siblings are placed in separate foster homes, the local department, child-placing agency, or public agency shall develop a plan to encourage frequent and regular visitation or communication between the siblings. The visitation or communication plan shall take into account the wishes of the child, and shall specify the frequency of visitation or communication, identify the party responsible for encouraging that visits or communication occur, and state any other requirements or restrictions related to such visitation or communication as may be determined necessary by the local department, child-placing agency, or public agency.

2008, c. 397.

**§ 63.2-900.3. School placement of children in foster care**

When placing a child of school age in a foster care placement, as defined in § 63.2-100, the local social services agency making such placement shall, in writing, determine jointly with the local school division whether it is in the child's best interests to remain enrolled at the school in which he was enrolled prior to the most recent foster care placement, pursuant to § 22.1-3.4.

2011, c. 154; 2012, c. 711.

**§ 63.2-901. Supervision of placement of children in homes**

The local director shall supervise the placement in suitable homes of children placed through an agreement with the parents or guardians or entrusted or committed to the local board pursuant to §§ 63.2-900, 63.2-902 and 63.2-903.

Code 1950, § 63-89; 1968, c. 578, § 63.1-67.2; 1994, c. 865; 2002, c. 747.

**§ 63.2-901.1. Criminal history and central registry check for placements of children**

A. Each local board and licensed child-placing agency shall obtain, in accordance with regulations adopted by the Board, criminal history record information from the Central Criminal Records Exchange and the Federal Bureau of Investigation through the Central Criminal Records Exchange and the results of a search of the child abuse and neglect central registry of any individual with whom the local board or licensed child-placing agency is considering placing a child on an emergency, temporary or permanent basis, including the birth parent of a child in foster care placement, unless the birth parent has revoked an entrustment agreement pursuant to § 63.2-1223 or 63.2-1817 or a local board or birth parent revokes a placement agreement while legal custody remains with the parent, parents, or guardians pursuant to § 63.2-900. The local board or licensed child-placing agency shall also obtain such background checks on all adult household members residing in the home of the individual with whom the child is to be placed pursuant to subsection B. Such state criminal records or registry search shall be at no cost to the individual. The local board or licensed child-placing agency shall pay for the national fingerprint criminal history record check or may require such individual to pay the cost of the fingerprinting or the national fingerprinting criminal history record check or both. In addition to the fees assessed by the Federal Bureau of Investigation, the designated state agency may assess a fee for responding to requests required by this section.

B. Background checks pursuant to this section require the following:

1. A sworn statement or affirmation disclosing whether or not the individual has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and whether or not the individual has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. That the individual submit to fingerprinting and provide personal descriptive information to be forwarded along with the individual's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information. The local board or licensed child-placing agency shall inform the individual that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final decision is made of the individual's fitness to have responsibility for the safety and well-being of children.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall forward it to the designated state agency. The state agency shall, upon receipt of an individual's record lacking disposition data, conduct research in whatever state and

local recordkeeping systems are available in order to obtain complete data. The state agency shall report to the local board or licensed child-placing agency whether the individual meets the criteria for having responsibility for the safety and well-being of children based on whether or not the individual has ever been convicted of or is the subject of pending charges set forth in § 63.2-1719 or an equivalent set forth in another state. Copies of any information received by a local board or licensed child-placing agency pursuant to this section shall be available to the state agency that regulates or operates such a child-placing agency but shall not be disseminated further; and

3. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse or neglect. In addition, a search of the child abuse and neglect registry maintained by any other state pursuant to the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248, in which a prospective parent or other adult in the home has resided in the preceding five years.

C. In emergency circumstances, each local board may obtain, from a criminal justice agency, criminal history record information from the Central Criminal Records Exchange and the Federal Bureau of Investigation through the Virginia Criminal Information Network (VCIN) for the criminal records search authorized by this section. Within three days of placing a child, the local board shall require the individual for whom a criminal history record information check was requested to submit to fingerprinting and provide personal descriptive information to be forwarded along with the fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal record history information, pursuant to subsection B. The child shall be removed from the home immediately if any adult resident fails to provide such fingerprints and written permission to perform a criminal history record check when requested.

D. Any individual with whom the local board is considering placing a child on an emergency basis shall submit to a search of the central registry maintained pursuant to § 63.2-1515 and the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248 for any founded complaint of child abuse or neglect. The search of the central registry must occur prior to emergency placement. Such central registry search shall be at no cost to the individual. Prior to emergency placement, the individual shall provide a written statement of affirmation disclosing whether he has ever been the subject of a founded case of child abuse or neglect within or outside the Commonwealth. Child-placing agencies shall not approve individuals with a founded complaint of child abuse as foster or adoptive parents.

E. The child-placing agency shall not approve a foster or adoptive home if any individual has a record of an offense defined in § 63.2-1719 or a founded complaint of abuse or neglect as maintained in registries pursuant to § 63.2-1515 and 42 U.S.C.S. 16901 et seq. A child-placing agency may approve as a foster parent an applicant convicted of not more than one misdemeanor as set out in § 18.2-57, not involving the abuse, neglect, or moral turpitude of a minor, provided 10 years have elapsed following the conviction.

F. A local board or child-placing agency may approve as a kinship foster care parent an applicant convicted of the following offenses, provided that 10 years have elapsed from the date of the conviction and the local board or child-placing agency makes a specific finding that approving the kinship foster care placement would not adversely affect the safety and well-being of the child: (i) a felony conviction for possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, but not including a felony conviction for possession of drugs with the intent to distribute; (ii) a misdemeanor conviction for arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; or (iii) an equivalent offense in another state.

2002, cc. 587, 606, § 63.1-56.01; 2005, c. 722; 2006, c. 558; 2007, cc. 606, 617, 623, 871; 2011, cc. 5, 156; 2012, c. 568.

**§ 63.2-902. Agreements with persons taking children**

Every local board and licensed child-placing agency shall, with respect to each child placed by it in a foster home or children's residential facility, enter into a written agreement contained in an approved foster care policy with the head of such home or facility, which agreement shall provide that the authorized representatives of the local board or agency shall have access at all times to such child and to the home or facility, and that the head of the home or facility will release custody of the child so placed to the authorized representatives of the local board or agency whenever, in the opinion of the local board or agency, or in the opinion of the Commissioner, it is in the best interests of the child.

Code 1950, § 63-243; 1968, c. 578, § 63.1-206; 2002, c. 747; 2008, cc. 241, 308.

**§ 63.2-903. Entrustment agreements; adoption**

A. Whenever a local board accepts custody of a child pursuant to an entrustment agreement entered into under the authority of § 63.2-900, or a licensed child-placing agency accepts custody of a child pursuant to an entrustment agreement entered into under the authority of § 63.2-1817, in the city or county juvenile and domestic relations district court a petition for approval of the entrustment agreement (i) shall be filed within a reasonable period of time, not to exceed 89 days after the execution of an entrustment agreement for less than 90 days, if the child is not returned to his home within that period; (ii) shall be filed within a reasonable period of time, not to exceed 30 days after the execution of an entrustment agreement for 90 days or longer or for an unspecified period of time, if such entrustment agreement does not provide for the termination of all parental rights and responsibilities with respect to the child; and (iii) may be filed in the case of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child.

B. For purposes of §§ 63.2-900, 63.2-1817 and this section, a parent who is less than 18 years of age shall be deemed fully competent and shall have legal capacity to execute a valid entrustment agreement, including an agreement that provides for the termination of all parental rights and responsibilities, and shall be as fully bound thereby as if such parent had attained the age of 18 years. An entrustment agreement for the termination of all parental rights and responsibilities

shall be executed in writing and notarized. An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the father of a child born out of wedlock if the identity of the father is not reasonably ascertainable, or if such father is given notice of the entrustment by registered or certified mail to his last known address and fails to object to the entrustment within 15 days of mailing of such notice. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence that would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the father is reasonably ascertainable. For purposes of determining whether the identity of the father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the mother and the father.

C. An entrustment agreement for the termination of parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child when such father has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and the child was conceived as a result of such violation.

D. A child may be placed for adoption by a licensed child-placing agency or a local board, in accordance with the provisions of § 63.2-1221.

Code 1950, §§ 63-73, 63-241; 1952, c. 409; 1960, c. 331; 1968, cc. 466, 578, 585, §§ 63.1-56, 63.1-204; 1972, c. 50; 1974, c. 620; 1975, cc. 248, 406; 1977, cc. 559, 562, 634, 645; 1978, cc. 730, 734, 735; 1981, c. 259; 1984, c. 734; 1985, cc. 18, 285; 1986, cc. 88, 281; 1988, c. 882; 1989, c. 647; 1991, c. 34; 1994, c. 865; 1995, cc. 772, 826; 1999, cc. 889, 1028; 2000, c. 830; 2002, c. 747; 2004, c. 815; 2005, c. 890; 2007, cc. 606, 623.

**§ 63.2-904. Investigation, visitation, and supervision of foster homes or independent living arrangement; removal of child**

A. Before placing or arranging for the placement of any such child in a foster home or independent living arrangement, a local board or licensed child-placing agency shall cause a careful study to be made to determine the suitability of such home or independent living arrangement, and after placement shall cause such home or independent living arrangement and child to be visited as often as necessary to protect the interests of such child.

B. Every local board or licensed child-placing agency that places a child in a foster home or independent living arrangement shall maintain such supervision over such home or independent living arrangement as shall be required by the standards and policies established by the Board.

C. Whenever any child placed by a local board or licensed child-placing agency and still under its control or supervision is subject, in the home in which he is placed, to unwholesome influences or to neglect or mistreatment, or whenever the Commissioner shall so order, such local board or

agency shall cause the child to be removed from such home and shall make for him such arrangements as may be approved by the Commissioner.

D. Consistent with the reasonable and prudent parent standard defined in 42 U.S.C. § 675(10)(A), caregivers for children in foster care shall support normalcy for such children. The Board shall adopt regulations to assist local boards and licensed child-placing agencies in carrying out practices that support careful and sensible parental decisions that maintain the health, safety, and best interest of the child while at the same time encouraging his emotional and developmental growth.

Code 1950, §§ 63-242, 63-248; 1968, c. 578, §§ 63.1-205, 63.1-211; 1989, c. 307; 2002, c. 747; 2008, cc. 475, 483; 2016, c. 631.

**§ 63.2-905. Foster care services**

Foster care services are the provision of a full range of casework, treatment and community services, including but not limited to independent living services, for a planned period of time to a child who is abused or neglected as defined in § 63.2-100 or in need of services as defined in § 16.1-228 and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board or the public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardians, or (iii) has been committed or entrusted to a local board or licensed child placing agency. Foster care services also include the provision and restoration of independent living services to a person who is over the age of 18 years but who has not yet reached the age of 21 years, in accordance with § 63.2-905.1.

1977, cc. 562, 634, § 63.1-55.8; 1986, c. 281; 1994, c. 865; 2002, c. 747; 2008, cc. 475, 483; 2013, c. 5.

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

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

Local departments and licensed child-placing agencies shall provide independent living services to any person between 18 and 21 years of age who (a) was in the custody of the local department of

social services immediately prior to his commitment to the Department of Juvenile Justice, (b) is in the process of transitioning from a commitment to the Department of Juvenile Justice to self-sufficiency, and (c) provides written notice of his intent to receive independent living services and enters into a written agreement for the provision of independent living services, which sets forth the terms and conditions of the provision of independent living services, with the local board or licensed child-placing agency within 60 days of his release from commitment to the Department of Juvenile Justice.

Local departments shall provide any person who chooses to leave foster care or terminate independent living services before his twenty-first birthday written notice of his right to request restoration of independent living services in accordance with this section by including such written notice in the person's transition plan. Such transition plan shall be created within 90 days prior to the person's discharge from foster care. Local departments and licensed child-placing agencies may provide independent living services as part of the foster care services provided to any child 14 years of age or older. All independent living services shall be provided in accordance with regulations adopted by the Board.

2004, c. 196; 2008, cc. 187, 475, 483; 2010, c. 257; 2013, cc. 5, 362, 564; 2014, cc. 94, 134.

**§ 63.2-905.2. Annual credit checks for children in foster care**

Local departments shall conduct annual credit checks on children 14 years of age and older who are in foster care to identify cases of identity theft or misuse of personal identifying information of such children. Local departments shall resolve, to the greatest extent possible, cases of identity theft or misuse of personal identifying information of foster care children identified pursuant to this section.

2012, c. 432; 2016, c. 631.

**§ 63.2-905.3. Documents provided to foster care youth**

When a child is leaving foster care upon reaching 18 years of age, unless the child has been in foster care for less than six months, the local department shall ensure that the child has, if eligible to receive, (i) a certified birth certificate, (ii) a social security card, (iii) health insurance information, (iv) a copy of the child's health care records, and (v) a driver's license or identification card issued by the Commonwealth.

2016, c. 631.

**§ 63.2-906. Foster care plans; permissible plan goals; court review of foster children**

A. Each child who is committed or entrusted to the care of a local board or to a licensed child-placing agency or who is placed through an agreement between a local board and the parent, parents or guardians, where legal custody remains with the parent, parents or guardians, shall have a foster care plan prepared by the local department, the child welfare agency, or the family assessment and planning team established pursuant to § 2.2-5207, as specified in § 16.1-281. The representatives of such department, child welfare agency, or team shall involve the child's parent(s) in

the development of the plan, except when parental rights have been terminated or the local department of social services or child welfare agency has made diligent efforts to locate the parent(s) and such parent(s) cannot be located, and any other person or persons standing in loco parentis at the time the board or child welfare agency obtained custody or the board or the child welfare agency placed the child. The representatives of such department, child welfare agency, or team shall involve the child in the development of the plan, if such involvement is consistent with the best interests of the child. In cases where either the parent(s) or child is not involved in the development of the plan, the department, child welfare agency, or team shall include in the plan a full description of the reasons therefor in accordance with § 16.1-281.

A court may place a child in the care and custody of (i) a public agency in accordance with § 16.1-251 or 16.1-252, and (ii) a public or licensed private child-placing agency in accordance with § 16.1-278.2, 16.1-278.4, 16.1-278.5, 16.1-278.6, or 16.1-278.8. Children may be placed by voluntary relinquishment in the care and custody of a public or private agency in accordance with § 16.1-277.01 or §§ 16.1-277.02 and 16.1-278.3. Children may be placed through an agreement where legal custody remains with the parent, parents or guardians in accordance with §§ 63.2-900 and 63.2-903, or § 2.2-5208.

B. Each child in foster care shall be assigned a permanent plan goal to be reviewed and approved by the juvenile and domestic relations district court having jurisdiction of the child's case. Permissible plan goals are to:

1. Transfer custody of the child to his prior family;

2. Transfer custody of the child to a relative other than his prior family;

3. Finalize an adoption of the child;

4. Place a child who is 16 years of age or older in permanent foster care;

5. Transition to independent living if, and only if, the child is admitted to the United States as a refugee or asylee; or

6. Place a child who is 16 years of age or older in another planned permanent living arrangement in accordance with subsection A2 of § 16.1-282.1.

C. Each child in foster care shall be subject to the permanency planning and review procedures established in §§ 16.1-281, 16.1-282, and 16.1-282.1.

2002, c. 747; 2005, c. 653; 2008, cc. 475, 483; 2009, c. 124; 2011, c. 730; 2016, c. 631.

**§ 63.2-907. Administrative review of children in foster care**

Each local board shall establish and keep current a social service plan with service objectives and shall provide the necessary social services for achievement of a permanent home for each child for whom it has care and custody or has an agreement with the parents or guardians to place in accordance with regulations adopted by the Board. Each local board shall review the cases of

children placed through an agreement or in its custody in accordance with the regulations adopted by the Board. Each local board shall review the cases of children placed through an agreement or in its custody on a planned basis to evaluate the current status and effectiveness (i) of the service plan's objectives and (ii) of the services being provided for each child in custody, which are directed toward the immediate care of and planning for permanency for the child, in accordance with policies of the Board.

The Department shall establish and maintain (a) a system to review and monitor compliance by local boards with the policies adopted by the Board and (b) a tracking system of every child in the care and custody of or placed by local boards in order to monitor the effectiveness of service planning, service objectives and service delivery by the local boards that shall be directed toward the achievement of permanency for children in foster care.

The Board shall adopt regulations necessary to implement the procedures and policies set out in this section. The Board shall establish as a goal that at any point in time the number of children who are in foster care for longer than twenty-four months shall not exceed 5,500 children.

1977, c. 634, § 63.1-56.2; 1982, c. 171; 1994, c. 865; 2002, c. 747.

**§ 63.2-908. Permanent foster care placement**

A. Permanent foster care placement means the place in which a child has been placed pursuant to the provisions of §§ 63.2-900, 63.2-903 and this section with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or § 63.2-1517. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

B. A local department or a licensed child-placing agency shall have authority pursuant to a court order to place a child who is 16 years of age or older over whom it has legal custody in a permanent foster care placement where the child shall remain until attaining majority or thereafter, until the age of 21 years, if such placement is a requisite to providing funds for the care of such child, so long as the child is a participant in an educational, treatment or training program approved pursuant to regulations of the Board. No such child shall be removed from the physical custody of the foster parents in the permanent care placement except upon order of the court or pursuant to § 16.1-251 or § 63.2-1517. The department or agency so placing a child shall retain legal custody of the child. A court shall not order that a child be placed in permanent foster care unless it finds that (i) diligent efforts have been made by the local department to place the child with his natural parents and such efforts have been unsuccessful, and (ii) diligent efforts have been made by the local department to place the child for adoption and such efforts have been unsuccessful or adoption is not a reasonable alternative for a long-term placement for the child under the circumstances.

C. Unless modified by the court order, the foster parent in the permanent foster care placement shall have the authority to consent to surgery, entrance into the armed services, marriage, application for a motor vehicle and driver's license, application for admission into college and any other such activities that require parental consent and shall have the responsibility for informing the placing department or agency of any such actions.

D. Any child placed in a permanent foster care placement by a local department shall, with the cooperation of the foster parents with whom the permanent foster care placement has been made, receive the same services and benefits as any other child in foster care pursuant to §§ 63.2-319, 63.2-900 and 63.2-903 and any other applicable provisions of law.

E. The Board shall establish minimum standards for the utilization, supervision and evaluation of permanent foster care placements.

F. The rate of payment for permanent foster care placements by a local department shall be in accordance with standards and rates established by the Board. The rate of payment for such placements by other licensed child-placing agencies shall be in accordance with standards and rates established by the individual agency.

G. If the child has a continuing involvement with his natural parents, the natural parents should be involved in the planning for a permanent placement. The court order placing the child in a permanent placement shall include a specification of the nature and frequency of visiting arrangements with the natural parents.

H. Any change in the placement of a child in permanent foster care or the responsibilities of the foster parents for that child shall be made only by order of the court which ordered the placement pursuant to a petition filed by the foster parents, local department, licensed child-placing agency or other appropriate party.

1977, c. 559, § 63.1-206.1; 1978, c. 671; 1984, c. 70; 2002, c. 747; 2016, c. 631.

**§ 63.2-909. Child support for child placed in foster care by court**

Pursuant to § 16.1-290, responsible persons shall pay child support for a child placed in foster care from the date that custody was awarded to the local department. The court order shall state the names of the responsible persons obligated to pay support, and either specify the amount of the support obligation pursuant to §§ 20-108.1 and 20-108.2 or indicate that the Division of Child Support Enforcement will establish the amount of the support obligation. In fixing the amount of support, the court or the Division of Child Support Enforcement shall consider the extent to which the payment of support by the responsible person may affect the ability of such responsible person to implement a foster care plan developed pursuant to § 16.1-281.

1995, c. 817, § 63.1-204.2; 2002, c. 747.

**§ 63.2-910. Child support for child placed in foster care where legal custody remains with parent or guardian**

Responsible persons shall pay child support for a child placed in foster care through an agreement where legal custody remains with the parent or guardian pursuant to subdivision A 4 of § 16.1-278.2 or § 63.2-900, from the date that the child was placed in foster care. The agreement between the parents and the local board shall include provisions for the payment of child support. In fixing the amount of support, the court, the Division of Child Support Enforcement, and the local board shall consider the extent to which the payment of support by the responsible person may affect the ability of such responsible person to implement a foster care plan. If the responsible person fails or refuses to pay such sum on a timely basis, the local board may petition the juvenile court to order such payment.

1995, c. 817, § 63.1-204.3; 1997, c. 420; 2002, c. 747; 2009, c. 124.

**§ 63.2-910.1. Acceptance of children by local departments of social services**

A local department of social services has the authority to take custody of abandoned children, to arrange appropriate placements for abandoned children, including foster care, and to institute proceedings for the termination of parental rights of abandoned children as provided in this title and Title 16.1.

2003, cc. 816, 822.

**§ 63.2-911. Liability insurance for foster parents**

The Department may provide liability insurance for civil matters for persons providing basic foster care services in foster homes, as defined in §§ 63.2-100 and 63.2-905, that are approved by local boards for children in their custody or children who the board has entered into an agreement to place where legal custody remains with the parents or guardians.

1978, c. 291, § 63.1-56.3; 1994, c. 865; 2002, c. 747.

**§ 63.2-912. Visitation of child placed in foster care**

The circuit courts and juvenile and domestic relations district courts shall have the authority to grant visitation rights to the natural parents, siblings, and grandparents of any child entrusted or committed to foster care if the court finds (i) that the parent, sibling, or grandparent had an ongoing relationship with the child prior to his being placed in foster care and (ii) it is in the best interests of the child that the relationship continue. The order of the court committing the child to foster care shall state the nature and extent of any visitation rights granted as provided in this section.

1985, c. 583, § 63.1-204.1; 2002, c. 747; 2008, c. 188.

**§ 63.2-913. Establishment of minimum training requirements**

The Department shall, pursuant to Board regulations, establish minimum training requirements and shall provide educational programs for foster and adoption workers employed by the local department and their supervisors.

2008, cc. 133, 700.

**§ 63.2-914. Not in effect**
Not in effect.

**§ 63.2-915. Appeals to Commissioner**
A. Pursuant to 42 U.S.C. § 671 (a)(12), any individual whose claim for benefits available pursuant to 42 U.S.C. § 670 et seq. or whose claim for benefits pursuant to § 63.2-905 is denied or is not acted upon by the local department with reasonable promptness shall have the right to appeal to the Commissioner.

B. The Commissioner shall provide an opportunity for a hearing, reasonable notice of which shall be given in writing to the applicant or recipient and to the proper local board in such manner and form as the Commissioner may prescribe. The Commissioner may make or cause to be made an investigation of the facts. The Commissioner shall give fair and impartial consideration to testimony of witnesses, or other evidence produced at the hearing, reports by the local board and local director or of investigations made or caused to be made by the Commissioner, or any facts that the Commissioner may deem proper to enable him to decide fairly the appeal or review. The decision of the Commissioner shall be binding and considered a final agency action for purposes of judicial review of such action pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

C. The Commissioner may delegate the duty and authority to consider and make determinations on any appeal filed in accordance with this section to duly qualified officers.

D. The Board shall promulgate regulations to implement the provisions of this section.

2013, c. 437.

## Chapter 10 - INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

**§ 63.2-1000. Interstate Compact on the Placement of Children; form of compact**
The Governor of Virginia is hereby authorized and requested to execute, on behalf of the Commonwealth of Virginia, with any other state or states legally joining therein, a compact which shall be in form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I. Purpose and Policy.

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II. Definitions.

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for individuals with mental illness, intellectual disability, or epilepsy or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III. Conditions for Placement.

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV. Penalty for Illegal Placement.

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V. Retention of Jurisdiction.

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such cases by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state

from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI. Institutional Care of Delinquent Children.

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII. Compact Administrator.

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have the power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII. Limitations.

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX. Enactment and Withdrawal.

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. Construction and Severability.

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

1975, c. 406, § 63.1-219.2; 2002, c. 747; 2012, cc. 476, 507.

## Chapter 11 - IMPLEMENTATION OF THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

### § 63.2-1100. Definitions

For the purposes of Chapter 10 (§ 63.2-1000 et seq.) of this title, the following words shall have the meaning ascribed to them by this section:

A. "Appropriate public authorities" as used in Article III of the compact means, with reference to this Commonwealth, the Department.

B. "Appropriate authority in the receiving state" as used in subdivision (a) of Article V of the compact means, with reference to this Commonwealth, the Commissioner.

1975, c. 406, § 63.1-219.1; 2002, c. 747.

### § 63.2-1101. Discharging financial responsibilities imposed by compact or agreement

Financial responsibility for any child placed pursuant to the provisions of Chapter 10 (§ 63.2-1000 et seq.) of this title shall be determined in accordance with the provision of Article V of the compact. In the event of partial or complete default of performance thereunder, the provisions of Chapter 19 (§ 63.2-1900 et seq.) of this title may also be invoked.

1975, c. 406, § 63.1-219.3; 2002, c. 747.

### § 63.2-1102. Supplementary agreements

The officers and agencies of this Commonwealth and its subdivisions having authority to place children are hereby empowered to enter into supplementary agreements with appropriate officers or agencies in other party states pursuant to subdivision (b) of Article V of the compact pursuant to Chapter 10 (§ 63.2-1000 et seq.) of this title. Any such agreement which contains a financial commitment or imposes a financial obligation on this Commonwealth or on a subdivision or agency thereof is subject to the written approval of the State Comptroller and of the chief fiscal officer of the subdivision involved.

1975, c. 406, § 63.1-219.4; 2002, c. 747.

**§ 63.2-1103. Fulfilling requirements for visitation, inspection or supervision**

Requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state set forth in Subtitle IV (§ 63.2-1700 et seq.) of this title shall be deemed to be fulfilled if performed by an authorized public or private agency in the receiving state pursuant to an agreement entered into by appropriate officers or agencies of this Commonwealth or of a subdivision thereof as provided in subdivision (b) of Article V of the compact pursuant to Chapter 10 (§ 63.2-1000 et seq.) of this title.

1975, c. 406, § 63.1-219.5; 2002, c. 747.

**§ 63.2-1104. Children from other states and countries**

A. Any child-placing agency or court that brings or sends, or causes to be brought or sent, a nonresident child into Virginia for the purpose of an interstate placement shall comply with the regulations and procedures adopted by the Board for the administration of the Interstate Compact on the Placement of Children (§ 63.2-1000 et seq.) regardless of whether the state from which the child is sent is a party to the compact. The agency shall also comply with all the regulations of the Board relating to nonresident children so brought or sent into the Commonwealth. Intercountry placements made by licensed child-placing agencies, courts, or other entities are subject to regulations prescribed by the Board.

B. The Board is authorized to adopt regulations for the bringing or sending of such children into the Commonwealth by child-placing agencies or courts for the purpose of an interstate placement, and for the care, maintenance, supervision and control of all children so brought or sent into the Commonwealth until they have been adopted, attained their majority, or have been otherwise lawfully discharged or released, as are reasonably conducive to the welfare of such children and as comply with the provisions of the Interstate Compact on the Placement of Children (§ 63.2-1000 et seq.).

C. In situations where a custodial parent identifies an urgent need for assistance or relief, the parent may, in cooperation with the receiving children's residential facility, place a child prior to final approval of the placement pursuant to the Interstate Compact on the Placement of Children when the placement is made without the involvement of a public officer or agency.

Code 1950, § 63-245; 1968, c. 578, § 63.1-207; 1975, c. 406; 1977, c. 645; 1980, c. 40; 1981, c. 75; 2002, c. 747; 2012, cc. 82, 773; 2013, c. 720.

**§ 63.2-1105. Children placed out of Commonwealth**

A. Any child-placing agency, licensed pursuant to Subtitle IV (§ 63.2-1700 et seq.), local board or court that takes or sends, or causes to be taken or sent, any resident child out of the Commonwealth for the purpose of an interstate or intercountry placement shall comply with the appropriate provisions of the Interstate Compact on the Placement of Children (§ 63.2-1000 et seq.) or shall first obtain the consent of the Commissioner, given in accordance with regulations of the Board relating to resident children so taken or sent out of the Commonwealth.

B. The Board is authorized to adopt regulations for the placement of children out of the Commonwealth by licensed child-placing agencies, local boards or courts as are reasonably conducive to the welfare of such children and as comply with the Interstate Compact on the Placement of Children (§ 63.2-1000 et seq.). Provided, however, notwithstanding the provisions of subdivision (d) of Article II of the compact that exclude from the definition of "placement" those institutions that care for individuals with mental illness, intellectual disability, or epilepsy or any institution primarily educational in character and any hospital or other medical facility, the Board shall prescribe procedures and regulations to govern such placements out of the Commonwealth by licensed child-placing agencies, local boards or courts.

Code 1950, § 63-73; 1952, c. 409; 1960, c. 331; 1968, cc. 466, 578, § 63.1-56; 1975, cc. 248, 406; 1977, cc. 559, 562, 634, 645, § 63.1-207.1; 1980, c. 40; 1978, c. 734; 1981, c. 75; 1984, c. 734; 1986, c. 281; 1991, c. 34; 1994, c. 865; 1999, c. 889; 2002, c. 747; 2012, cc. 476, 507.

## Chapter 12 - ADOPTION

## Article 1 - GENERAL PROVISIONS

### § 63.2-1200. Who may place children for adoption

A child may be placed for adoption by:

1. A licensed child-placing agency;

2. A local board;

3. The child's parent or legal guardian if the placement is a parental placement; and

4. Any agency outside the Commonwealth that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates.

1978, c. 730, § 63.1-220.1; 1985, c. 285; 1989, c. 647; 2000, c. 830, § 63.1-219.8; 2002, c. 747; 2004, c. 815; 2006, cc. 825, 848.

### § 63.2-1200.1. Recognition of foreign adoption; issuance of birth certificates

A. Any adoption of a child who was born in a foreign country and who was not a citizen of the United States at the time of birth shall, subject to the provisions of subsection D of § 63.2-1201.1, be recognized by the Commonwealth and the rights and obligations of the parties shall be determined as though the order of adoption was entered by a court of the Commonwealth if the adoption was finalized pursuant to the laws of the country from which the child was adopted, and the child was admitted to the United States with an IR-3 or IH-3 visa issued by the United States Citizenship and Immigration Services. In such cases, the adoptive parents shall not be required to readopt the child in Virginia.

B. In cases in which an adoption of a child was finalized pursuant to the laws of a foreign country and the child was admitted to the United States with an IR-3 or IH-3 visa, the adoptive parents, if residents of the Commonwealth at the time the adoption was finalized, may submit a report of

adoption to the State Registrar of Vital Records on a form furnished by the State Registrar, which shall (i) include evidence as to the date, place of birth, and parentage of the adopted person; (ii) provide information necessary to establish a new certificate of birth for the adopted person; (iii) include a certified or notarized copy of the final order of adoption entered by the foreign court, together with a certified translation or a notarized copy of a certified translation of the final order of adoption in cases in which the original order is not in English; and (iv) include an affidavit from the adoptive parents indicating that they are receiving supervision from a licensed or approved child-placing agency in the United States or have received supervision from a licensed or approved child-placing agency in the United States and have satisfied all post-adoption requirements as required by the foreign country from which the child was adopted. Upon receipt of a report pursuant to this subsection, the State Registrar shall establish a new certificate of birth for the adopted person, and such certificate of birth shall be registered in accordance with the provisions of § 32.1-261.

2011, c. 486; 2012, c. 323.

**§ 63.2-1201. Filing of petition for adoption; venue; jurisdiction; and proceedings**

Proceedings for the adoption of a minor child and for a change of name of such child shall be instituted only by petition to a circuit court in the county or city in which the petitioner resides, in the county or city in which the child-placing agency that placed the child is located, or in the county or city in which a birth parent executed a consent pursuant to § 63.2-1233. Such petition may be filed by any natural person who resides in the Commonwealth, or who has custody of a child placed by a child-placing agency of the Commonwealth, or by an adopting parent of a child who was subject to a consent proceeding held pursuant to § 63.2-1233, or by intended parents who are parties to a surrogacy contract. The petition shall ask leave to adopt a minor child not legally the petitioner's by birth and, if it is so desired by the petitioner, also to change the name of such child. In the case of married persons, or persons who were previously married who are permitted to adopt a child under § 63.2-1201.1, the petition shall be the joint petition of the husband and wife or former spouses but, in the event the child to be adopted is legally the child by birth or adoption of one of the petitioners, such petitioner shall unite in the petition for the purpose of indicating consent to the prayer thereof only. If any procedural provision of this chapter applies to only one of the adoptive parents, then the court may waive the application of the procedural provision for the spouse of the adoptive parent to whom the provision applies. The petition shall contain a full disclosure of the circumstances under which the child came to live, and is living, in the home of the petitioner. Each petition for adoption shall be signed by the petitioner as well as by counsel of record, if any. In any case in which the petition seeks the entry of an adoption order without referral for investigation, the petition shall be under oath.

A single petition for adoption under the provisions of this section shall be sufficient for the concurrent adoption by the same petitioners of two or more children who have the same birth parent

or parents, and nothing in this section shall be construed as having heretofore required a separate petition for each of such children.

The petition for adoption, except those filed pursuant to subdivisions 5 and 6 of § 63.2-1210, shall include an additional $50 filing fee that shall be used to fund the Putative Father Registry established in Article 7 (§ 63.2-1249 et seq.) of this chapter.

A petition filed while the child is under 18 years of age shall not become invalid because the child reaches 18 years of age prior to the entry of a final order of adoption. Any final order of adoption entered pursuant to § 63.2-1213 after a child reaches 18 years of age, where the petition was filed prior to the child turning 18 years of age, shall have the same effect as if the child was under 18 years of age at the time the order was entered by the circuit court provided the court has obtained the consent of the adoptee.

Code 1950, § 63-348; 1952, c. 550; 1954, c. 489; 1956, c. 300; 1964, c. 459; 1968, c. 578, § 63.1-221; 1970, c. 672; 1973, c. 406; 1975, c. 461; 1978, c. 730; 1983, c. 614; 1988, c. 882; 1989, c. 647; 1991, cc. 76, 602; 1995, cc. 772, 826; 2000, c. 830, § 63.1-219.9; 2002, c. 747; 2006, cc. 825, 848; 2007, cc. 606, 623; 2008, cc. 116, 868; 2009, c. 805.

**§ 63.2-1201.1. Previously married persons who stood in loco parentis during the time of the marriage may adopt in the same manner as married persons**

A. A man and woman previously married to each other who stood in loco parentis to a child during their marriage to each other, and who could have adopted or readopted the child pursuant to this chapter while married to each other, but whose marriage is void, has been annulled or has dissolved, may adopt or readopt the child pursuant to the provisions in this chapter that are applicable to married persons.

B. An individual previously married to a parent of a child by birth or adoption, and who stood in loco parentis to that child during the marriage, and who could have adopted the child pursuant to § 63.2-1241 during the marriage, may, with the consent of the prior spouse who is a parent of the child by birth or adoption, adopt the child, after the marriage has been dissolved, annulled or voided, pursuant to the provisions of this chapter that are applicable to step-parents.

C. Any person or persons seeking to adopt or readopt pursuant to this section may be permitted to do so even if they have remarried.

D. Nothing in this section shall be construed to permit any child to have more than two living parents by birth or adoption, who have legal rights and obligations in respect to the child, in the form of one father and one mother.

2008, c. 868.

**§ 63.2-1202. Parental, or agency, consent required; exceptions**

A. No petition for adoption shall be granted, except as hereinafter provided in this section, unless written consent to the proposed adoption is filed with the petition. Such consent shall be in

writing, signed under oath and acknowledged before an officer authorized by law to take acknowledgments. The consent of a birth parent for the adoption of his child placed directly by the birth parent shall be executed as provided in § 63.2-1233, and the circuit court may accept a certified copy of an order entered pursuant to § 63.2-1233 in satisfaction of all requirements of this section, provided the order clearly evidences compliance with the applicable notice and consent requirements of § 63.2-1233.

B. A birth parent who has not reached the age of 18 shall have legal capacity to give consent to adoption and perform all acts related to adoption, and shall be as fully bound thereby as if the birth parent had attained the age of 18 years.

C. Consent shall be executed:

1. By the birth mother and by any man who:

a. Is an acknowledged father under § 20-49.1;

b. Is an adjudicated father under § 20-49.8;

c. Is a presumed father under subsection D; or

d. Has registered with the Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.).

Verification of compliance with the notice provisions of the Putative Father Registry shall be provided to the court.

2. By the child-placing agency or the local board having custody of the child, with right to place him for adoption, through court commitment or parental agreement as provided in § 63.2-900, 63.2-903, or 63.2-1221; or an agency outside the Commonwealth that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates; and

3. By the child if he is 14 years of age or older, unless the circuit court finds that the best interests of the child will be served by not requiring such consent.

D. A man shall be presumed to be the father of a child if:

1. He and the mother of the child are married to each other and the child is born during the marriage;

2. He and the mother of the child were married to each other and the child is born within 300 days of their date of separation, as evidenced by a written agreement or decree of separation, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce; or

3. Before the birth of the child, he and the mother of the child married each other in apparent compliance with the law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within 300 days of their date of separation, as evidenced by

a written agreement or decree of separation, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce.

Such presumption may be rebutted by sufficient evidence that would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation with the birth mother for a period of at least 300 days prior to the birth of the child.

E. No consent shall be required of a birth father if he denies under oath and in writing the paternity of the child. Such denial of paternity may be withdrawn no more than 10 days after it is executed. Once the child is 10 days old, any executed denial of paternity is final and constitutes a waiver of all rights with respect to the adoption of the child and cannot be withdrawn.

F. No consent shall be required of the birth father of a child when the birth father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and the child was conceived as a result of such violation.

G. No notice or consent shall be required of any person whose parental rights have been terminated by a court of competent jurisdiction, including foreign courts that have competent jurisdiction. No notice or consent is required of any birth parent of a child for whom a guardianship order was granted when the child was approved by the United States Citizenship and Immigration Services for purposes of adoption.

H. No consent shall be required of a birth parent who, without just cause, has neither visited nor contacted the child for a period of six months immediately prior to the filing of the petition for adoption or the filing of a petition to accept consent to an adoption. The prospective adoptive parent(s) shall establish by clear and convincing evidence that the birth parent(s), without just cause, has neither visited nor contacted the child for a period of six months immediately prior to the filing of the petition for adoption or the filing of a petition to accept consent to an adoption. This provision shall not infringe upon the birth parent's right to be noticed and heard on the allegation of abandonment. For purposes of this section, the payment of child support, in the absence of other contact with the child, shall not be considered contact.

I. A birth father of the child may consent to the termination of all of his parental rights prior to the birth of the child.

J. The failure of the nonconsenting party to appear at any scheduled hearing, either in person or by counsel, after proper notice has been given to said party, shall constitute a waiver of any objection and right to consent to the adoption.

K. If a birth parent, legal guardian, or prospective adoptee, executing a consent, entrustment, or other documents related to the adoption, cannot provide the identification required pursuant to § 47.1-14, the birth parent, legal guardian, or prospective adoptee may execute a self-authenticating affidavit as to his identity subject to the penalties contained in § 63.2-1217.

Code 1950, § 63-351; 1954, c. 489; 1956, c. 300; 1960, c. 331; 1962, c. 603; 1968, c. 578, § 63.1-225; 1972, cc. 73, 475, 823; 1974, c. 620; 1978, cc. 730, 735, 744; 1985, c. 18; 1986, c. 387; 1989, c. 647; 1993, c. 553; 1995, cc. 772, 826; 1999, c. 1028; 2000, c. 830, § 63.1-219.10; 2002, c. 747; 2005, c. 890; 2006, cc. 825, 848; 2007, cc. 606, 623; 2009, c. 805; 2011, c. 486; 2012, c. 424.

**§ 63.2-1203. When consent is withheld or unobtainable**

A. If, after consideration of the evidence, the circuit court finds that the valid consent of any person or agency whose consent is required is withheld contrary to the best interests of the child as set forth in § 63.2-1205, or is unobtainable, the circuit court may grant the petition without such consent:

1. Fifteen days after personal service of notice of petition on the party or parties whose consent is required by this section;

2. If personal service is unobtainable, 10 days after the completion of the execution of an order of publication against the party or parties whose consent is required by this section concerning the petition;

3. If a birth parent is deceased, upon the filing of a death certificate for a deceased birth parent with the court; or

4. If the judge certifies on the record that the identity of any person whose consent is hereinabove required is not reasonably ascertainable.

An affidavit of the birth mother that the identity of the birth father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the circuit court that would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the birth father is reasonably ascertainable. For purposes of determining whether the identity of the birth father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the birth mother and the birth father.

B. If the child is not in the custody of a child-placing agency and both parents are deceased, the circuit court, after hearing evidence to that effect, may grant the petition without the filing of any consent.

C. In an adoption proceeding where the consent of a birth parent is required, but the petition for adoption alleges that the birth parent is withholding consent to the adoption, the court shall provide written notice to the birth parent of his right to be represented by counsel prior to any hearing or decision on the petition. Upon request, the court shall appoint counsel for any such birth parent if such parent has been determined to be indigent by the court pursuant to § 19.2-159.

Code 1950, § 63-351; 1954, c. 489; 1956, c. 300; 1960, c. 331; 1962, c. 603; 1968, c. 578, § 63.1-225; 1972, cc. 73, 475, 823; 1974, c. 620; 1978, cc. 730, 735, 744; 1985, c. 18; 1986, c. 387; 1989,

c. 647; 1993, c. 553; 1995, cc. 772, 826; 1999, c. 1028; 2000, c. 830, § 63.1-219.11; 2002, c. 747; 2009, c. 805; 2012, c. 425.

**§ 63.2-1204. When consent is revocable; fraud or duress; mutual consent**

Parental consent to an adoption or an entrustment agreement not yet finalized by the court, shall be revocable prior to the final order of adoption (i) upon proof of fraud or duress or (ii) after placement of the child in an adoptive home, upon written, mutual consent of the birth parents and prospective adoptive parents or the child-placing agency.

Code 1950, § 63-351; 1954, c. 489; 1956, c. 300; 1960, c. 331; 1962, c. 603; 1968, c. 578, § 63.1-225; 1972, cc. 73, 475, 823; 1974, c. 620; 1978, cc. 730, 735, 744; 1985, c. 18; 1986, c. 387; 1989, c. 647; 1993, c. 553; 1995, cc. 772, 826; 1999, c. 1028; 2000, c. 830, § 63.1-219.12; 2002, c. 747; 2009, c. 805.

**§ 63.2-1205. Best interests of the child; standards for determining**

In determining whether the valid consent of any person whose consent is required is withheld contrary to the best interests of the child, or is unobtainable, the circuit court or juvenile and domestic relations district court, as the case may be, shall consider whether granting the petition pending before it would be in the best interest of the child. The circuit court or juvenile and domestic relations district court, as the case may be, shall consider all relevant factors, including the birth parent(s)' efforts to obtain or maintain legal and physical custody of the child; whether the birth parent(s) are currently willing and able to assume full custody of the child; whether the birth parent(s)' efforts to assert parental rights were thwarted by other people; the birth parent(s)' ability to care for the child; the age of the child; the quality of any previous relationship between the birth parent(s) and the child and between the birth parent(s) and any other minor children; the duration and suitability of the child's present custodial environment; and the effect of a change of physical custody on the child.

1995, cc. 772, 826, § 63.1-225.1; 2000, c. 830, § 63.1-219.13; 2002, c. 747; 2003, c. 467; 2006, cc. 825, 848.

**§ 63.2-1205.1. Violent sex offenders prohibited from adopting a child**

No petition for adoption shall be granted if the person seeking to adopt has been convicted of a sexually violent offense or an offense requiring registration pursuant to § 9.1-902.

2006, c. 384.

**§ 63.2-1206. No parental presumption after revocation period expires**

If, after the expiration of the appropriate revocation period provided for in § 63.2-1223 or § 63.2-1234, a birth parent or an alleged birth parent attempts to obtain or regain custody of or attempts to exercise parental rights to a child who has been placed for adoption, there shall be no parental presumption in favor of any party. Upon the motion of any such birth parent or alleged birth parent, or upon the motion of any person or agency with whom the child has been placed, the circuit or juvenile and domestic relations district court, as the case may be, shall determine (i) whether

the birth parent or alleged birth parent is a person whose consent to the adoption is required and, if so, then (ii) pursuant to § 63.2-1205, whether, in the best interest of the child, the consent of the person whose consent is required is being withheld contrary to the best interest of the child or is unobtainable.

1995, cc. 772, 826, § 63.1-220.7; 2000, c. 830, § 63.1-219.14; 2002, c. 747; 2003, c. 467.

**§ 63.2-1207. Removal of child from adoptive home**

When a child is placed in an adoptive home pursuant to an adoptive home placement agreement by a local board or by a licensed child-placing agency pursuant to § 63.2-1221, or by the birth parent or legal guardian of the child pursuant to § 63.2-1230, and a circuit court of competent jurisdiction has not entered an interlocutory order of adoption, such child shall not be removed from the physical custody of the adoptive parents, except (i) with the consent of the adoptive parents; (ii) upon order of the juvenile and domestic relations district court or the circuit court of competent jurisdiction; (iii) pursuant to § 63.2-904, which removal shall be subject to review by the juvenile and domestic relations district court upon petition of the adoptive parents; or (iv) upon order of the juvenile and domestic relations district court that accepted consent when consent has been revoked as authorized by § 63.2-1204 or § 63.2-1223.

When a child has been placed in an adoptive home directly by the birth parents or legal guardian of the child, the adoptive parents have been granted custody of the child pursuant to § 63.2-1233, and it becomes necessary to remove the child from the home of the adoptive parents, the juvenile and domestic relations district court entering such an order shall order that any consent given for the purposes of such placement shall be void and shall determine the custody of the child.

1989, c. 647, § 63.1-220.5; 1995, cc. 772, 826; 2000, c. 830, § 63.1-219.15; 2002, c. 747.

**§ 63.2-1208. Investigations; report to circuit court**

A. Upon consideration of the petition, the circuit court shall, upon being satisfied as to proper jurisdiction and venue, immediately enter an order referring the case to a child-placing agency to conduct an investigation and prepare a report unless no investigation is required pursuant to this chapter. The court shall enter the order of reference prior to or concurrently with the entering of an order of publication, if such is necessary. Upon entry of the order of reference, the clerk shall forward a copy of the order of reference, the petition, and all exhibits thereto to the Commissioner and the child-placing agency retained to provide investigative, reporting, and supervisory services. If no Virginia agency was retained to provide such services, the order of reference, petition, and all exhibits shall be forwarded to the local director of social services of the locality where the petitioners reside or resided at the time of filing the petition or had legal residence at the time the petition was filed.

B. Upon receiving a petition and order of reference from the circuit court, the applicable agency shall make a thorough investigation of the matter and report thereon in writing, in such form as the Commissioner may prescribe, to the circuit court within 60 days after the copy of the petition

and all exhibits thereto are forwarded. A copy of the report to the circuit court shall be served on the Commissioner by delivering or mailing a copy to him on or before the day of filing the report with the circuit court. On the report to the circuit court there shall be appended either acceptance of service or certificate of the local director, or the representative of the child-placing agency, that copies were served as this section requires, showing the date of delivery or mailing. The circuit court shall expeditiously consider the merits of the petition upon receipt of the report.

C. If the report is not made to the circuit court within the periods specified, the circuit court may proceed to hear and determine the merits of the petition and enter such order or orders as the circuit court may deem appropriate.

D. The investigation requested by the circuit court shall include, in addition to other inquiries that the circuit court may require the child-placing agency or local director to make, inquiries as to (i) whether the petitioner is financially able, except as provided in Chapter 13 (§ 63.2-1300 et seq.) of this title, morally suitable, in satisfactory physical and mental health and a proper person to care for and to train the child; (ii) what the physical and mental condition of the child is; (iii) why the parents, if living, desire to be relieved of the responsibility for the custody, care, and maintenance of the child, and what their attitude is toward the proposed adoption; (iv) whether the parents have abandoned the child or are morally unfit to have custody over him; (v) the circumstances under which the child came to live, and is living, in the physical custody of the petitioner; (vi) whether the child is a suitable child for adoption by the petitioner; (vii) what fees have been paid by the petitioners or on their behalf to persons or agencies that have assisted them in obtaining the child; and (viii) whether the requirements of subsections E and F have been met. Any report made to the circuit court shall include a recommendation as to the action to be taken by the circuit court on the petition. A copy of any report made to the circuit court shall be furnished to counsel of record representing the adopting parent or parents. When the investigation reveals that there may have been a violation of § 63.2-1200 or § 63.2-1218, the local director or child-placing agency shall so inform the circuit court and the Commissioner.

E. The report shall include the relevant physical and mental history of the birth parents if known to the person making the report. The child-placing agency or local director shall document in the report all efforts they made to encourage birth parents to share information related to their physical and mental history. However, nothing in this subsection shall require that an investigation of the physical and mental history of the birth parents be made.

F. The report shall include a statement by the child-placing agency or local director that all reasonably ascertainable background, medical, and psychological records of the child have been provided to the prospective adoptive parent(s). The report also shall include a list of such records provided.

G. If the specific provisions set out in §§ 63.2-1228, 63.2-1238, 63.2-1242 and 63.2-1244 do not apply, the petition and all exhibits shall be forwarded to the local director where the petitioners reside or to a licensed child-placing agency.

Code 1950, §§ 63-348.1, 63-349, 63-356.1; 1950, pp. 441, 626; 1954, c. 489; 1956, cc. 187, 300, 489; 1962, c. 603; 1964, cc. 139, 429; 1968, cc. 346, 578, §§ 63.1-222, 63.1-223, 63.1-231; 1972, c. 823; 1974, cc. 26, 337, 421, 493, 507; 1975, c. 364; 1977, c. 526; 1978, c. 730; 1979 c. 339; 1980, c. 740; 1982, c. 115; 1985, cc. 298, 300; 1986, cc. 481, 482; 1987, c. 482; 1988, cc. 53, 579, 599, 882; 1989, c. 647; 1992, c. 607; 1993, c. 553; 1995, cc. 772, 826; 2000, c. 830, §§ 63.1-219.35, 63.1-219.45, 63.1-219.49, 63.1-219.51; 2002, c. 747; 2003, c. 502; 2006, cc. 825, 848; 2007, c. 446.

**§ 63.2-1209. Entry of interlocutory order**

If, in the case of a direct parental placement adoption pursuant to § 63.2-1230 or in circumstances in which an interlocutory order is necessary in an agency adoption, after considering the home study or any required report, the circuit court is satisfied that all of the applicable requirements have been complied with, that the petitioner is financially able to maintain adequately, except as provided in Chapter 13 (§ 63.2-1300 et seq.) of this title, and is morally suitable and a proper person to care for and train the child, that the child is suitable for adoption by the petitioner, and that the best interests of the child will be promoted by the adoption, it shall enter an interlocutory order of adoption declaring that henceforth, subject to the probationary period hereinafter provided for and to the provisions of the final order of adoption, the child will be, to all intents and purposes, the child of the petitioner. If the petition includes a prayer for a change of the child's name and the circuit court is satisfied that such change is in the best interests of the child, upon entry of final order, the name of the child shall be changed. An attested copy of every interlocutory order of adoption shall be forwarded forthwith by the clerk of the circuit court in which it was entered to the Commissioner and to the licensed or duly authorized child-placing agency or the local director that prepared the required home study or report. The agency or director shall, after receipt of the attested copy of the interlocutory order of adoption, prepare a report of visitation pursuant to § 63.2-1212.

If the circuit court denies the petition for adoption and if it appears to the circuit court that the child is without proper care, custody or guardianship, the circuit court may, in its discretion, appoint a guardian for the child or commit the child to a custodial agency as provided for in §§ 16.1-278.2, 16.1-278.3 and 64.2-1703, respectively.

Code 1950, § 63-352; 1954, c. 489; 1964, c. 429; 1968, c. 578, § 63.1-226; 1974, c. 507; 1975, c. 364; 1989, c. 647; 1991, c. 534; 1992, c. 607; 2000, c. 830, § 63.1-219.16; 2002, c. 747; 2009, c. 805.

**§ 63.2-1210. Probationary period, interlocutory order and order of reference not required under certain circumstances**

The circuit court may omit the probationary period and the interlocutory order and enter a final order of adoption under the following circumstances:

1. If the child is legally the child by birth or adoption of one of the petitioners and the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper.

2. If one of the petitioners is a step-parent of the child and the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper. The court may omit the order of reference if the petitioners meet the requirements of § 63.2-1241.

3. After receipt of the report required by § 63.2-1208, if the child has been placed in the physical custody of the petitioner by a child-placing agency and (i) the placing or supervising agency certifies to the circuit court that the child has lived in the physical custody of the petitioner continuously for a period of at least six months immediately preceding the filing of the petition and has been visited by a representative of such agency at least three times within a six-month period, provided there are not less than 90 days between the first visit and the last visit, and (ii) the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper. The circuit court may, for good cause shown, in cases of placement by a child-placing agency, omit the requirement that the three visits be made within a six-month period.

4. After receipt of the report, if the child has been in physical custody of the petitioner continuously for at least three years immediately prior to the filing of the petition for adoption, and the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper.

5. After receipt of the report, if the child has been legally adopted according to the laws of a foreign country with which the United States has diplomatic relations and if the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper, and the child (i) has been in the physical custody of the petitioners for at least one year immediately prior to the filing of the petition and a representative of a child-placing agency has visited the petitioner and child at least once in the six months immediately preceding the filing of the petition or during its investigation pursuant to § 63.2-1208 or (ii) has been in the physical custody of the petitioners for at least six months immediately prior to the filing of the petition, has been visited by a representative of a child-placing agency or of the local department three times within such six-month period with no fewer than ninety days between the first and last visits, and the last visit has occurred within six months immediately prior to the filing of the petition.

6. After receipt of the report, if the child was placed into Virginia from a foreign country in accordance with § 63.2-1104, the adoption was not finalized pursuant to the laws of that foreign country, and the child has been in the physical custody of the petitioner for at least six months immediately prior to the filing of the petition and has been visited by a representative of a licensed child-placing agency or of the local department three times within the six-month period with no fewer than 90 days between the first and last visits. The circuit court may, for good cause

shown, in cases of an international placement, omit the requirement that the three visits be made within a six-month period.

Code 1950, § 63-355; 1952, c. 71; 1954, c. 489; 1962, c. 603; 1964, c. 429; 1968, c. 578, § 63.1-229; 1975, c. 364; 1978, c. 750; 1980, c. 268; 1983, c. 334; 1986, c. 470; 1992, c. 607; 1993, c. 553; 1995, cc. 772, 826; 2000, c. 830, § 63.1-219.17; 2002, c. 747; 2006, cc. 825, 848; 2011, c. 486.

**§ 63.2-1211. Revocation of interlocutory order**

The circuit court may, by order entered of record, revoke its interlocutory order of adoption at any time prior to the entry of the final order, for good cause shown, on its own motion, or on the motion of the birth parents of the child, or of the petitioner, or of the child himself by his next friend, or of the child-placing agency, which placed the child with the petitioners or of the Commissioner; but, no such order of revocation shall be entered, except on motion of the petitioner, unless the petitioner is given ten days' notice of such motion in writing and an opportunity to be heard or has removed from the Commonwealth. The clerk of the circuit court shall forward an attested copy of every such order to the Commissioner and to the child-placing agency that placed the child.

When an interlocutory order has been entered and subsequently is revoked, the circuit court may proceed in the same manner as set forth in § 63.2-1209 to enter an order concerning the subsequent custody or guardianship of the child.

Code 1950, § 63-353; 1954, c. 489; 1964, c. 429; 1968, c. 578, § 63.1-227; 1995, cc. 772, 826; 2000, c. 830, § 63.1-219.18; 2002, c. 747.

**§ 63.2-1212. Visitations during probationary period and report**

A. Except as hereinafter provided, after the entry of an interlocutory order of adoption, (i) the licensed or duly authorized child-placing agency; (ii) if the child was not placed by an agency and the placement is not a parental placement, the local director; (iii) if the placement is a parental placement, the child-placing agency that submitted the home study; or, (iv) if the child was placed by an agency in another state or by an agency, court, or other entity in another country, the local director or licensed child-placing agency, whichever agency completed the home study or provided supervision, shall cause or have caused the child to be visited at least three times within a period of six months by an agent of such local board or local department or by an agent of such licensed or duly authorized child-placing agency. Whenever practicable, such visits shall be made within the six-month period immediately following the date upon which the child was placed in the physical care of the adoptive parents or of entry of the interlocutory order; however, no less than ninety days shall elapse between the first visit and the last visit. The agency that placed the child, the child-placing agency that submitted the home study, the local director or the licensed child-placing agency, as applicable, shall make a written report to the circuit court, in such form as the Commissioner may prescribe, of the findings made pursuant to such visitations. A copy of the report to the circuit court shall be furnished to the counsel of record for the parties, which copy

shall be returned by such counsel as is required by § 63.2-1246 for the return of the original report. A copy of the report to the circuit court shall be served on the Commissioner by delivering or mailing a copy to him on or before the day of filing the report with the circuit court. On the report to the circuit court there shall be appended either acceptance of service or certification of the local director or the representative of the child-placing agency, that copies were served as this section requires, showing the date of delivery or mailing.

B. The three supervisory visits required in subsection A shall be conducted in the presence of the child. At least one such visit shall be conducted in the home of the petitioners in the presence of the child and both petitioners, unless the petition was filed by a single parent or one of the petitioners is no longer residing in the home.

C. When it is determined for purposes of subsection B that the petitioner no longer resides in the adoptive home, the child-placing agency or local director shall contact the petitioner to determine whether or not the petitioner wishes to remain a party to the proceedings and shall include in its report to the circuit court the results of its findings.

Code 1950, § 63-354; 1956, c. 187; 1962, c. 603; 1964, c. 429; 1968, c. 578, § 63.1-228; 1972, c. 73; 1975, c. 364; 1976, c. 367; 1980, c. 740; 1988, c. 599; 1989, c. 647; 1992, c. 607; 2000, c. 830, § 63.1-219.19; 2002, c. 747; 2007, cc. 606, 623; 2009, c. 805.

**§ 63.2-1213. Final order of adoption**

After consideration of the report made pursuant to § 63.2-1212 or as permitted pursuant to § 63.2-1210, if the circuit court is satisfied that the best interests of the child will be served thereby, the circuit court shall enter the final order of adoption. However, a final order of adoption shall not be entered until information has been furnished by the petitioner in compliance with § 32.1-262 unless the circuit court, for good cause shown, finds the information to be unavailable or unnecessary. No circuit court shall deny a petitioner a final order of adoption for the sole reason that the child was placed in the physical custody of the petitioner by a person not authorized to make such placements pursuant to § 63.2-1200. An attested copy of every final order of adoption shall be forwarded, by the clerk of the circuit court in which it was entered, to the Commissioner and to the child-placing agency that placed the child or to the local director, in cases where the child was not placed by an agency.

Code 1950, § 63-356; 1962, c. 603; 1964, c. 429; 1968, c. 578, § 63.1-230; 1975, c. 364; 1981, c. 318; 1988, c. 431; 2000, c. 830, § 63.1-219.20; 2002, c. 747; 2006, cc. 825, 848; 2007, cc. 606, 623.

**§ 63.2-1214. Annual review of pending petitions for adoption; duty of Commissioner and circuit court clerk**

After the expiration of twelve months from the date of the entry of the last order upon a petition for adoption, except when the last order entered is a final order of adoption, it shall be the responsibility of the Commissioner to notify the clerk of the circuit court of all adoption cases that

have been pending for a period of more than twelve months, and the clerk of the circuit court shall place on the docket all such cases for review by the circuit court as soon as practicable.

1976, c. 353, § 63.1-230.1; 2000, c. 830, § 63.1-219.21; 2002, c. 747.

**§ 63.2-1215. Legal effects of adoption**

The birth parents, and the parents by previous adoption, if any, other than any such parent who is the husband or wife of one of the petitioners, shall, by final order of adoption, be divested of all legal rights and obligations in respect to the child including the right to petition any court for visitation with the child. Except where a final order of adoption is entered pursuant to § 63.2-1241, any person whose interest in the child derives from or through the birth parent or previous adoptive parent, including but not limited to grandparents, stepparents, former stepparents, blood relatives and family members shall, by final order of adoption, be divested of all legal rights and obligations in respect to the child including the right to petition any court for visitation with the child. In all cases the child shall be free from all legal obligations of obedience and maintenance in respect to such persons divested of legal rights. Any child adopted under the provisions of this chapter shall, from and after the entry of the interlocutory order or from and after the entry of the final order where no such interlocutory order is entered, be, to all intents and purposes, the child of the person or persons so adopting him, and, unless and until such interlocutory order or final order is subsequently revoked, shall be entitled to all the rights and privileges, and subject to all the obligations, of a child of such person or persons born in lawful wedlock. An adopted person is the child of an adopting parent, and as such, the adopting parent shall be entitled to testify in all cases civil and criminal, as if the adopted child was born of the adopting parent in lawful wedlock.

Code 1950, § 63-357; 1968, c. 578, § 63.1-233; 1995, cc. 772, 826; 1997, c. 690; 2000, c. 830, § 63.1-219.22; 2002, c. 747; 2003, c. 229.

**§ 63.2-1216. Final order not subject to attack after six months**

After the expiration of six months from the date of entry of any final order of adoption from which no appeal has been taken to the Court of Appeals, the validity thereof shall not be subject to attack in any proceedings, collateral or direct, for any reason, including but not limited to fraud, duress, failure to give any required notice, failure of any procedural requirement, or lack of jurisdiction over any person, and such order shall be final for all purposes.

Code 1950, § 63-361; 1954, c. 489; 1968, c. 578, § 63.1-237; 1984, c. 703; 1995, cc. 772, 826; 2000, c. 830, § 63.1-219.23; 2002, c. 747.

**§ 63.2-1217. Provision of false information; penalty**

Any person who knowingly and intentionally provides false information in writing and under oath, which is material to an adoptive placement shall be guilty of a Class 6 felony. The Commissioner is authorized to investigate such cases and may refer the case to the attorney for the Commonwealth for prosecution.

1995, cc. 772, 826, § 63.1-220.6; 2000, c. 830, § 63.1-219.24; 2002, c. 747.

**§ 63.2-1218. Certain exchange of property, advertisement, solicitation prohibited; penalty**

No person or child-placing agency shall charge, pay, give, or agree to give or accept any money, property, service or other thing of value in connection with a placement or adoption or any act undertaken pursuant to this chapter except (i) reasonable and customary services provided by a licensed or duly authorized child-placing agency and fees paid for such services; (ii) payment or reimbursement for medical expenses and insurance premiums that are directly related to the birth mother's pregnancy and hospitalization for the birth of the child who is the subject of the adoption proceedings, for mental health counseling received by the birth mother or birth father related to the adoption, and for expenses incurred for medical care for the child; (iii) payment or reimbursement for reasonable and necessary expenses for food, clothing, and shelter when, upon the written advice of her physician, the birth mother is unable to work or otherwise support herself due to medical reasons or complications associated with the pregnancy or birth of the child; (iv) payment or reimbursement for reasonable expenses incurred incidental to any required court appearance including, but not limited to, transportation, food and lodging; (v) usual and customary fees for legal services in adoption proceedings; and (vi) payment or reimbursement of reasonable expenses incurred for transportation in connection with any of the services specified in this section or intercountry placements as defined in § 63.2-100 and as necessary for compliance with state and federal law in such placements. No person shall advertise or solicit to perform any activity prohibited by this section. Any person violating the provisions of this section shall be guilty of a Class 6 felony. The Commissioner is authorized to investigate cases in which fees paid for legal services appear to be in excess of usual and customary fees in order to determine if there has been compliance with the provisions of this section.

1989, c. 647, § 63.1-220.4; 1993, c. 553; 1995, cc. 772, 826; 2000, c. 830, § 63.1-219.25; 2002, c. 747.

**§ 63.2-1219. Suspected violation of property exchange information**

If the juvenile and domestic relations or circuit court or any participating licensed or duly authorized child-placing agency suspects that there has been a violation of § 63.2-1218 in connection with a placement or adoption, it shall report such findings to the Commissioner for investigation and appropriate action. If the Commissioner suspects that a person has violated § 63.2-1218, he shall report his findings to the appropriate attorney for the Commonwealth. If the Commissioner believes that such violation has occurred in the course of the practice of a profession or occupation licensed or regulated pursuant to Title 54.1, he shall also report such findings to the appropriate regulatory authority for investigation and appropriate disciplinary action.

1989, c. 647, § 63.1-220.3; 1991, cc. 364, 602; 1992, c. 125; 1993, cc. 338, 553; 1995, cc. 772, 826; 1999, c. 1028; 2000, c. 830, § 63.1-219.26; 2002, c. 747.

**§ 63.2-1220. Issuance of birth certificates for children adopted in the Commonwealth**

For the purpose of securing a new birth certificate for a child adopted pursuant to the laws of the Commonwealth, the procedures set forth in § 32.1-262 shall be followed. The Department shall

furnish a document listing all post-adoption services available to adoptive families to the State Registrar of Vital Records for distribution to adoptive parents pursuant to § 32.1-261.

The Department of Social Services shall update annually and make available on its website the document listing all post-adoption services available to adoptive families pursuant to this section.

1970, c. 672, § 63.1-221.1; 2000, c. 830, § 63.1-219.27; 2002, c. 747; 2003, c. 985; 2011, c. 486; 2015, cc. 5, 17.

**§ 63.2-1220.01. Foreign adoptions; establishment of date of birth**

A circuit court may, as part of a proceeding for the adoption of a child born in a foreign country or upon petition to amend a certificate of birth for a person born in a foreign country, correct or establish a date of birth for such person. In cases in which adoptive parents are unable to ascertain the date of birth of the child or in which medical evidence indicates that the stated date of birth of the child is incorrect, the court may establish a corrected date of birth based on medical evidence of the child's actual age and the State Registrar of Vital Records shall issue a certificate of birth pursuant to § 32.1-261 showing the date of birth established by the court.

2012, c. 424.

**§ 63.2-1220.1. Establishment of minimum training requirements**

The Department shall, pursuant to Board regulations, establish minimum training requirements and shall provide educational programs for foster and adoption workers employed by the local department and their supervisors.

2008, cc. 133, 700.

## Article 1.1 - POST-ADOPTION CONTACT AND COMMUNICATION AGREEMENTS

**§ 63.2-1220.2. Authority to enter into post-adoption contact and communication agreements**

A. In any proceeding for adoption pursuant to this chapter, the birth parent(s) and the adoptive parent(s) of a child may enter into a written post-adoption contact and communication agreement. A post-adoption contact and communication agreement may include, but is not limited to, provisions related to contact and communication between the child, the birth parent(s), and the adoptive parent(s) and provisions for the sharing of information about the child, including sharing of photographs of the child and information about the child's education, health, and welfare.

B. Any post-adoption contact and communication agreement entered into by the birth parent(s) and the adoptive parent(s) of a child shall include acknowledgment by the birth parent(s) that the adoption of the child is irrevocable, even if the adoptive parent(s) do not abide by the post-adoption contact and communication agreement, and acknowledgment by the adoptive parent(s) that the agreement grants the birth parent(s) the right to seek to enforce the post-adoption contact and communication provisions set forth in the agreement. The petitioner for adoption shall file such

agreement with other documents filed in the circuit court having jurisdiction over the child's adoption.

C. In no event shall failure to enter into a post-adoption contact and communication agreement with identified adoptive parent(s) after a valid entrustment agreement or consent to the child's adoption is executed, or failure to comply with a post-adoption contact and communication agreement, affect the validity of (i) the consent to the adoption, (ii) the voluntary relinquishment of parental rights, (iii) the voluntary or involuntary termination of parental rights, or (iv) the finality of the adoption.

D. No birth parent(s) or adoptive parent(s) of a child shall be required to enter into a post-adoption contact and communication agreement.

2010, c. 331.

**§ 63.2-1220.3. Approval of post-adoption contact and communication agreements**

A. The circuit court may approve a post-adoption contact and communication agreement authorized pursuant to § 16.1-283.1 or entered into pursuant to this article and filed with the court for a petition for adoption if:

1. The court determines that the child's best interest would be served by approving the post-adoption contact and communication agreement;

2. The adoptive parent or parents and birth parent or parents have consented to a post-adoption contact and communication agreement filed with the court;

3. The agency authorized to place the child for adoption and to consent to an adoption or authorized to recommend the placement of a child for adoption and the child's guardian ad litem have recommended that the post-adoption contact and communication agreement be approved as being in the best interest of the child, or, if there is no agency sponsoring the adoption, the agency that prepared the adoption report has been informed of the post-adoption contact and communication agreement and has recommended in the agency's report to the circuit court that the post-adoption contact and communication agreement be approved; however, in cases in which no child placing agency or guardian ad litem for the child is involved, this requirement may be waived; and

4. Where the child is 14 years of age or older, consent to the post-adoption contact and communication agreement is obtained from the child.

B. To be enforceable, any agreement under this section shall be approved by the circuit court and incorporated into the final order of adoption.

C. The circuit court shall not require execution of a post-adoption contact and communication agreement as a condition for approving any adoption.

2010, c. 331.

**§ 63.2-1220.4. Jurisdiction to approve post-adoption contact and communication agreements**

A. Unless otherwise stated in the final order of adoption, the circuit court of the jurisdiction in which the final order of adoption was entered shall retain jurisdiction to modify or enforce the terms of a post-adoption contact and communication agreement entered into pursuant to this article.

B. A birth parent or parents or adoptive parent or parents who have executed a post-adoption contact and communication agreement as described in this article may file a petition with the circuit court of the jurisdiction in which the final order of adoption was entered:

1. To modify the post-adoption contact and communication agreement; and

2. To compel a birth or adoptive parent to comply with the post-adoption contact and communication agreement. The court may not award monetary damages as a result of the filing of a petition for modification of or compliance with the agreement. The court may modify the agreement at any time before or after the adoption if the court, after notice and opportunity to be heard by the birth parent or parents and the adoptive parent or parents, determines that the child's best interest requires the modification of the agreement. Before the court modifies an agreement or hears a motion to compel compliance, the court may appoint a guardian ad litem to represent the child's best interest.

C. The circuit court shall not grant a request to modify the terms of a post-adoption contact and communication agreement unless the moving party establishes that there has been a change of circumstances and the agreement is no longer in the child's best interest; provided, however, that no modification shall affect the irrevocability of the adoption.

2010, c. 331.

## Article 2 - AGENCY ADOPTIONS

### § 63.2-1221. Placement of children for adoption by agency or local board

A licensed child-placing agency or local board may place for adoption, and is empowered to consent to the adoption of, any child who is properly committed or entrusted to its care, in accordance with the provisions of §§ 63.2-900, 63.2-903, 63.2-1817 or this section, when the order of commitment or the entrustment agreement between the birth parent(s) and the agency or board provides for the termination of all parental rights and responsibilities with respect to the child for the purpose of placing and consenting to the adoption of such child.

The entrustment agreement shall divest the birth parent(s) of all legal rights and obligations with respect to the child, and the child shall be free from all legal obligations of obedience and maintenance with respect to them, provided that such rights and obligations may be restored to the birth parent(s) and the child by circuit court order prior to the entry of a final order of adoption upon proof of fraud or duress. An entrustment agreement for the termination of all parental rights and responsibilities shall be executed in writing and notarized, and shall be revocable prior to entry of an order finalizing the agreement (i) upon proof of fraud or duress, or (ii) after the

placement of the child in an adoptive home upon written mutual consent of the birth parents and prospective adoptive parents.

1989, c. 647, § 63.1-220.2; 1990, c. 202; 1991, c. 364; 1995, cc. 772, 826; 1999, c. 1028; 2000, c. 830, § 63.1-219.28; 2002, c. 747; 2004, c. 815; 2009, c. 805.

**§ 63.2-1222. Execution of entrustment agreement by birth parent(s); exceptions; notice and objection to entrustment; copy required to be furnished; requirement for agencies outside the Commonwealth**

A. For the purposes of this section, a birth parent who is less than 18 years of age shall be deemed fully competent and shall have legal capacity to execute a valid entrustment agreement, including an agreement that provides for the termination of all parental rights and responsibilities, and perform all acts related to adoption and shall be as fully bound thereby as if such birth parent had attained the age of 18 years.

B. An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child born out of wedlock if the identity of the birth father is not reasonably ascertainable or such birth father did not register with the Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) or the birth father named by the birth mother denies under oath and in writing the paternity of the child. An affidavit signed by the birth mother stating that the identity of the birth father is unknown may be filed with the court alleging that the identity of the birth father is not known or reasonably ascertainable. A birth father shall be given notice of the entrustment if he is an acknowledged father pursuant to § 20-49.1, an adjudicated father pursuant to § 20-49.8, a presumed father pursuant to § 63.2-1202, or a putative father who has registered with Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.). If the putative father's identity is reasonably ascertainable, he shall be given notice pursuant to the requirements of § 63.2-1250.

C. When a birth father is required to be given notice, he may be given notice of the entrustment by registered or certified mail to his last known address. If he fails to object to the entrustment within 15 days of the mailing of such notice, his entrustment shall not be required. An objection to an entrustment agreement shall be in writing, signed by the objecting party or counsel of record for the objecting party and filed with the agency that mailed the notice of entrustment within the time period specified in § 63.2-1223.

D. The execution of an entrustment agreement shall be required of a presumed father except under the following circumstances: (i) if he denies paternity under oath and in writing in accordance with § 63.2-1202; (ii) if the presumption is rebutted by sufficient evidence, satisfactory to the circuit court, which would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child; (iii) if another man admits, in writing

and under oath, that he is the biological father; or (iv) if an adoptive placement has been determined to be in the best interests of the child pursuant to § 63.2-1205.

E. When none of the provisions of subsections C and D apply, notice of the entrustment shall be given to the presumed father pursuant to the requirements of § 16.1-277.01.

F. An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child when the birth father has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and the child was conceived as a result of such violation.

G. A birth father may execute an entrustment agreement for the termination of all of his parental rights prior to the birth of the child. Such entrustment shall be subject to the revocation provisions of § 63.2-1223.

H. No entrustment shall be required of a birth father if he denies under oath and in writing the paternity of the child. Such denial of paternity may be withdrawn no more than 10 days after it is executed. Once the child is 10 days old, any executed denial of paternity is final and constitutes a waiver of all rights with respect to the adoption of the child and cannot be withdrawn.

I. A copy of the entrustment agreement shall be furnished to all parties signing such agreement.

J. When any agency outside the Commonwealth, or its agent, that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates executes an entrustment agreement in the Commonwealth with a birth parent for the termination of all parental rights and responsibilities with respect to the child, the requirements of §§ 63.2-1221 through 63.2-1224 shall apply. The birth parent may expressly waive, under oath and in writing, the execution of the entrustment under the requirements of §§ 63.2-1221 through 63.2-1224 in favor of the execution of an entrustment or relinquishment under the laws of another state if the birth parent is represented by independent legal counsel. Such written waiver shall expressly state that the birth parent has received independent legal counsel advising of the laws of Virginia and of the other state and that Virginia law is expressly being waived. The waiver also shall include the name, address, and telephone number of such legal counsel. Any entrustment agreement that fails to comply with such requirements shall be void.

1989, c. 647, § 63.1-220.2; 1990, c. 202; 1991, c. 364; 1995, cc. 772, 826; 1999, c. 1028; 2000, c. 830, § 63.1-219.29; 2002, c. 747; 2004, c. 815; 2005, c. 890; 2006, cc. 825, 848; 2007, cc. 606, 623; 2009, c. 805; 2012, c. 424.

**§ 63.2-1223. Revocation of entrustment agreement**

A valid entrustment agreement terminating all parental rights and responsibilities to the child shall be revocable by either of the birth parents until (i) the child has reached the age of 10 days and (ii) seven days have elapsed from the date of execution of the agreement. In addition, a valid

entrustment agreement shall be revocable by either of the birth parents if the child has not been placed in the physical custody of the prospective adoptive parents at the time of such revocation. Revocation of an entrustment agreement shall be in writing and signed by the revoking party. The written revocation shall be delivered to the child-placing agency or local board to which the child was originally entrusted. Delivery of the written revocation shall be made during the business day of the child-placing agency or local board to which the child was originally entrusted, in accordance with the applicable time period set out in this section. If the revocation period expires on a Saturday, Sunday, legal holiday or any day on which the agency or local board is officially closed, the revocation period shall be extended to the next day that is not a Saturday, Sunday, legal holiday or other day on which the agency or local board is officially closed. Upon revocation of the entrustment agreement, the child shall be returned to the parent revoking the agreement.

1989, c. 647, § 63.1-220.2; 1990, c. 202; 1991, c. 364; 1995, cc. 772, 826; 1999, c. 1028; 2000, c. 830, § 63.1-219.30; 2002, c. 747; 2006, cc. 825, 848; 2007, cc. 606, 623.

**§ 63.2-1224. Explanation of process, legal effects of adoption required**

Prior to the placement of a child for adoption, the licensed child-placing agency or local board having custody of the child shall provide an explanation of the adoption process to the birth mother and, if reasonably available, the man who is an acknowledged father pursuant to § 20-49.1, an adjudicated father pursuant to § 20-49.8, a presumed father pursuant to § 63.2-1202, or a putative father who has registered with the Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter.

1989, c. 647, § 63.1-220.2; 1990, c. 202; 1991, c. 364; 1995, cc. 772, 826; 1999, c. 1028; 2000, c. 830, § 63.1-219.31; 2002, c. 747; 2010, c. 855.

**§ 63.2-1225. Determination of appropriate home**

A. In determining the appropriate home in which to place a child for adoption, a married couple or an unmarried individual shall be eligible to receive placement of a child for purposes of adoption. Prior to or after the acceptance of custody of a child placed for adoption, a licensed child-placing agency or a local board shall consider the recommendations of the birth parent(s), a physician or attorney licensed in the Commonwealth, or a clergyman who is familiar with the situation of the prospective adoptive parent(s) or the child. No birth parent, physician, attorney or clergyman shall advertise that he is available to make recommendations, nor shall he charge any fee for such recommendations to a board or agency, except that an attorney may charge for legal fees and services rendered in connection with such placement.

B. The agency or local board may give consideration to placement of the child with the recommended adoptive parent(s) if the agency or local board finds that such placement is in the best interest of the child. When the birth parent(s) has recommended such placement, the agency or local board shall provide the birth parent(s) the opportunity to be represented by independent legal counsel as well as the opportunity for counseling with a social worker, family-services specialist, or other qualified equivalent worker. The agency or board also shall advise the prospective

adoptive parent(s) of the right to be represented by independent legal counsel. The parties may, but are not required to, exchange identifying information as provided for in subdivision A 3 of § 63.2-1232.

1989, c. 647, § 63.1-220.2; 1990, c. 202; 1991, c. 364; 1995, cc. 772, 826; 1999, c. 1028; 2000, c. 830, § 63.1-219.32; 2002, c. 747; 2003, c. 779; 2006, cc. 654, 825; 2009, c. 805; 2014, c. 285.

**§ 63.2-1226. When birth parents recommend adoptive parents**

When a licensed child-placing agency or a local board is requested to accept custody of a child for the purpose of placing the child with adoptive parent(s) recommended by the birth parent(s) or a person other than a licensed child-placing agency or local board, either the parental placement adoption provisions or the agency adoption provisions of this chapter shall apply to such placement at the election of the birth parent(s). Such agency or local board shall provide information to the birth parent(s) regarding the parental placement adoption and agency adoption provisions and shall provide the birth parent the opportunity to be represented by independent legal counsel as well as counseling with a social worker, family-services specialist, or other qualified equivalent worker. No person shall charge, pay, give, or agree to give or accept any money, property, services, or other thing of value in connection with such adoption except as provided in § 63.2-1218.

1989, c. 647, § 63.1-220.2; 1990, c. 202; 1991, c. 364; 1995, cc. 772, 826; 1999, c. 1028; 2000, c. 830, § 63.1-219.33; 2002, c. 747; 2006, cc. 654, 825; 2007, cc. 606, 623; 2014, c. 285.

**§ 63.2-1227. Filing of petition for agency adoption**

A petition for the adoption of a child placed in the physical custody of the petitioners by a child-placing agency shall be filed in the name by which the child will be known after adoption, provided the name is followed by the registration number of the child's original birth certificate and the state or country in which the registration occurred unless it is verified by the registrar of vital statistics of the state or country of birth that such information is not available. In the case of a child born in another country, an affidavit by a representative of the child-placing agency that a birth certificate number is not available may be substituted for verification by a registrar of vital statistics for that country. The report of investigation required by § 63.2-1208 and, when applicable, the report required by § 63.2-1212 shall be identified with the child's name as it appears on the birth certificate, the birth registration number and the name by which the child is to be known after the final order of adoption is entered. The petition for adoption shall not state the birth name of the child or identify the birth parents unless it is specifically stated in the agency's consent that the parties have exchanged identifying information.

A single petition for adoption under the provisions of this section shall be sufficient for the concurrent adoption by the same petitioners of two or more children who have the same birth parent or parents, and nothing in this section shall be construed as having heretofore required a separate petition for each of such children.

Code 1950, § 63-348; 1952, c. 550; 1954, c. 489; 1956, c. 300; 1964, c. 459; 1968, c. 578, § 63.1-221; 1970, c. 672; 1973, c. 406; 1975, c. 461; 1978, c. 730; 1983, c. 614; 1988, c. 882; 1989, c. 647; 1991, cc. 76, 602; 1995, cc. 772, 826; 2000, c. 830, § 63.1-219.34; 2002, c. 747; 2006, cc. 825, 848.

**§ 63.2-1228. Forwarding of petition**

Upon the filing of the petition, the circuit court shall, upon being satisfied as to proper jurisdiction and venue, immediately enter an order referring the case to a child-placing agency to conduct an investigation and prepare a report pursuant to § 63.2-1208. Upon entry of the order of reference, the court shall forward a copy of the petition and all exhibits thereto to the Commissioner and to the agency that placed the child. In cases where the child was placed by an agency in another state, or by an agency, court, or other entity in another country, the petition and all exhibits shall be forwarded to the local director or licensed child-placing agency, whichever agency completed the home study or provided supervision. If no Virginia agency provided such services, or such agency is no longer licensed or has gone out of business, the petition and all exhibits shall be forwarded to the local director of the locality where the petitioners reside or resided at the time of filing the petition, or had legal residence at the time of the filing of the petition.

Code 1950, § 63-349; 1954, c. 489; 1956, c. 489; 1956, c. 187; 1962, c. 603; 1964, c. 429; 1968, cc. 346, 578, § 63.1-223; 1974, cc. 26, 493, 507; 1975, c. 364; 1978, c. 730; 1980, c. 740; 1982, c. 115; 1988, cc. 579, 599, 882; 1989, c. 647; 1992, c. 607; 1993, c. 553; 1995, cc. 772, 826; 2000, c. 830, § 63.1-219.35; 2002, c. 747; 2006, cc. 825, 848.

**§§ 63.2-1228.1, 63.2-1228.2. Repealed**

Repealed by Acts 2010, c. 331, cl. 2.

**§ 63.2-1229. Foster parent adoption**

When a foster parent who has a child placed in the foster parents' home by a licensed or duly authorized child-placing agency desires to adopt the child and (i) the child has resided in the home of such foster parent continuously for at least eighteen months and (ii) the birth parents' rights to the child have been terminated, the circuit court shall accept the petition filed by the foster parent and shall order a thorough investigation of the matter to be made pursuant to § 63.2-1208. The circuit court may refer the matter for investigation to a licensed or duly authorized child-placing agency other than the agency holding custody of the child. Upon completion of the investigation and report and filing of the consent of the agency holding custody of the child, or upon the finding contemplated by § 63.2-1205, the circuit court may enter a final order of adoption waiving visitation requirements, if the circuit court determines that the adoption is in the best interests of the child.

Code 1950, § 63-348; 1952, c. 550; 1954, c. 489; 1956, c. 300; 1964, c. 459; 1968, c. 578, § 63.1-221; 1970, c. 672; 1973, c. 406; 1975, c. 461; 1978, c. 730; 1983, c. 614; 1988, c. 882; 1989, c. 647; 1991, cc. 76, 602; 1995, cc. 772, 826; 2000, c. 830, § 63.1-219.36; 2002, c. 747; 2007, cc. 606, 623.

## Article 3 - PARENTAL PLACEMENT ADOPTIONS

### § 63.2-1230. Placement of children by parent or guardian

The birth parent, legal guardian, or adoptive parent of a child may place his child for adoption directly with the adoptive parents of his choice. Consent to the proposed adoption shall be executed upon compliance with the provisions of this chapter before a juvenile and domestic relations district court or, if the birth parent or legal guardian does not reside in Virginia, before a court having jurisdiction over child custody matters in the jurisdiction where the birth parent or legal guardian resides when requested by a juvenile and domestic relations district court of this Commonwealth, pursuant to § 20-146.11. Consent proceedings shall be advanced on the juvenile and domestic relations district court docket so as to be heard by the court within ten days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

1989, c. 647, § 63.1-220.3; 1991, cc. 364, 602; 1992, c. 125; 1993, cc. 338, 553; 1995, cc. 772, 826; 1999, c. 1028; 2000, c. 830, § 63.1-219.37; 2001, c. 305; 2002, c. 747; 2009, c. 805.

### § 63.2-1231. Home study; meeting required; exception

A. Prior to the consent hearing in the juvenile and domestic relations district court, a home study of the adoptive parent(s) shall be completed by a licensed or duly authorized child-placing agency and the prospective adoptive parents shall be informed that information about shaken baby syndrome, its effects, and resources for help and support for caretakers is available on a website maintained by the Department in accordance with regulations adopted by the Board. The home study shall make inquiry as to (i) whether the prospective adoptive parents are financially able, morally suitable, and in satisfactory physical and mental health to enable them to care for the child; (ii) the physical and mental condition of the child, if known; (iii) the circumstances under which the child came to live, or will be living, in the home of the prospective adoptive family, as applicable; (iv) what fees have been paid by the prospective adoptive family or in their behalf in the placement and adoption of the child; (v) whether the requirements of subdivisions A 1, A 2, A 3, and A 5 of § 63.2-1232 have been met; and (vi) any other matters specified by the circuit court. In the course of the home study, the agency social worker, family-services specialist, or other qualified equivalent worker shall meet at least once with the birth parent(s) and at least once with the prospective adoptive parents. Upon agreement of both parties, such meetings may occur simultaneously or separately.

B. Any home study conducted pursuant to this section for the purpose of parental placement or agency placement shall be valid for a period of 36 months from the date of completion of the study. However, the Board may, by regulation, require an additional state criminal background check before finalizing an adoption if more than 18 months have passed from the completion of the home study.

1989, c. 647, § 63.1-220.3; 1991, cc. 364, 602; 1992, c. 125; 1993, cc. 338, 553; 1995, cc. 772, 826; 1999, c. 1028; 2000, c. 830, § 63.1-219.38; 2002, c. 747; 2006, cc. 825, 848; 2007, c. 808; 2008, c. 494; 2010, c. 551; 2014, c. 285.

**§ 63.2-1232. Requirements of a parental placement adoption; exception**

A. The juvenile and domestic relations district court shall not accept consent until it determines that:

1. The birth parent(s) are aware of alternatives to adoption, adoption procedures, and opportunities for placement with other adoptive families, and that the birth parents' consent is informed and uncoerced.

2. A licensed or duly authorized child-placing agency has counseled the prospective adoptive parents with regard to alternatives to adoption, adoption procedures, including the need to address the parental rights of birth parents, the procedures for terminating such rights, and opportunities for adoption of other children; that the prospective adoptive parents' decision is informed and uncoerced; and that they intend to file an adoption petition and proceed toward a final order of adoption.

3. The birth parent(s) and adoptive parents have exchanged identifying information including but not limited to full names, addresses, physical, mental, social and psychological information and any other information necessary to promote the welfare of the child, unless both parties agree in writing to waive the disclosure of full names and addresses.

4. Any financial agreement or exchange of property among the parties and any fees charged or paid for services related to the placement or adoption of the child have been disclosed to the court and that all parties understand that no binding contract regarding placement or adoption of the child exists.

5. There has been no violation of the provisions of § 63.2-1218 in connection with the placement; however, if it appears there has been such violation, the court shall not reject consent of the birth parent to the adoption for that reason alone but shall report the alleged violation as required by § 63.2-1219.

6. A licensed or duly authorized child-placing agency has conducted a home study of the prospective adoptive home in accordance with regulations established by the Board and has provided to the court a report of such home study, which shall contain the agency's recommendation regarding the suitability of the placement. A married couple or an unmarried individual shall be eligible to receive placement of a child for adoption.

7. The birth parent(s) have been informed of their opportunity to be represented by legal counsel.

B. The juvenile and domestic relations district court shall not accept the consent if the requirements of subsection A have not been met. In such cases, it shall refer the birth parent to a licensed or duly authorized child-placing agency for investigation and recommendation in

accordance with §§ 63.2-1208 and 63.2-1238. If the juvenile and domestic relations district court determines that any of the parties is financially unable to obtain the required services, it shall refer the matter to the local director.

C. In cases in which a birth parent who resides in the Commonwealth places his child for adoption with adoptive parents in another state and the laws of that receiving state govern the proceeding for adoption, the birth parent may elect to waive the execution of consent pursuant to § 63.2-1233 and instead execute consent to the adoption pursuant to the laws of the receiving state. Any waiver of consent made pursuant to this subsection shall be made under oath and in writing, and shall expressly state that the birth parent has received independent legal counsel from an attorney licensed in the Commonwealth of Virginia advising him of the laws of the Commonwealth, the laws of the receiving state pursuant to which he elects to consent to the adoption, and the effects of his waiver of consent pursuant to § 63.2-1233 and election to consent pursuant to the laws of the receiving state. Any waiver of consent and election to consent pursuant to the laws of a receiving state shall include the name, address, and telephone number of such legal counsel. Failure to comply with this section shall render a waiver of consent pursuant to § 63.2-1233 and election to consent pursuant to the laws of the receiving state as authorized by this subsection invalid.

D. When consent to a parental placement adoption is sought pursuant to this article and the prospective adoptive parent(s) have had continuous physical and legal custody of the child for five or more years, the juvenile and domestic relations district court may, in its discretion, accept consent without (i) a home study as required by subsection A of § 63.2-1231 and subdivision A 6 of this section and (ii) the meeting and counseling requirements, as they relate to the prospective adoptive parent(s), listed in subsection A of § 63.2-1231 and subdivision A 2 of this section. All other provisions of the parental placement adoption statutes shall apply.

1989, c. 647, § 63.1-220.3; 1991, cc. 364, 602; 1992, c. 125; 1993, cc. 338, 553; 1995, cc. 772, 826; 1999, c. 1028; 2000, c. 830, § 63.1-219.39; 2002, c. 747; 2006, cc. 654, 825, 848; 2010, c. 276; 2015, c. 529.

**§ 63.2-1233. Consent to be executed in juvenile and domestic relations district court; exceptions**

When the juvenile and domestic relations district court is satisfied that all requirements of § 63.2-1232 have been met with respect to at least one birth parent and the adoptive child is at least in the third calendar day of life, that birth parent or both birth parents, as the case may be, shall execute consent to the proposed adoption in compliance with the provisions of § 63.2-1202 while before the juvenile and domestic relations district court in person and in the presence of the prospective adoptive parents. The juvenile and domestic relations district court shall accept the consent of the birth parent(s) and transfer custody of the child to the prospective adoptive parents, pending notification to any nonconsenting birth parent, as described hereinafter.

1. a. The execution of consent before the juvenile and domestic relations district court shall not be required of a birth father if the birth father consents under oath and in writing to the adoption.

b. The consent of a birth father who is not married to the mother of the child at the time of the child's conception or birth shall not be required if the putative father named by the birth mother denies under oath and in writing the paternity of the child or if the putative father did not register with the Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter. If the identity of the birth father is reasonably ascertainable, but the whereabouts of the birth father are not reasonably ascertainable, verification of compliance with the Putative Father Registry shall be provided to the court.

c. When a birth father is required to be given notice, he may be given notice of the adoption by registered or certified mail to his last known address and if he fails to object to the adoption within 15 days of the mailing of such notice, his consent shall not be required. An objection shall be in writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with the clerk of the juvenile and domestic relations district court in which the petition was filed during the business day of the court, within the time period specified in this section. When no timely objection is filed, no hearing on this issue is required. Failure of the objecting party to appear at any scheduled hearing, either in person or by counsel, shall constitute a waiver of such objection.

d. The juvenile and domestic relations district court may accept the written consent of the birth father at the time of the child's conception or birth, provided that his identifying information required in § 63.2-1232 is filed in writing with the juvenile and domestic relations district court of jurisdiction. Such consent shall advise the birth father of his opportunity for legal representation, shall identify the court in which the case was or is intended to be filed, and shall be presented to the juvenile and domestic relations district court for acceptance. The consent may waive further notice of the adoption proceedings and shall contain the name, address and telephone number of the birth father's legal counsel or an acknowledgment that he was informed of his opportunity to be represented by legal counsel and declined such representation. For good cause shown, the court may dispense with the requirements regarding the filing of the birth father's identifying information pursuant to this subdivision 1. d.

e. In the event that the birth mother's consent is not executed in the juvenile and domestic relations district court, the consent of the birth father shall be executed in the juvenile and domestic relations district court.

f. A child born to a married birth mother shall be presumed to be the child of her husband and his consent shall be required, unless the court finds that the father's consent is withheld contrary to the best interests of the child as provided in § 63.2-1205 or if his consent is unobtainable. The consent of such presumed father shall be under oath and in writing and may be executed in or out of court. The presumption that the husband is the father of the child may be rebutted by sufficient

evidence, satisfactory to the juvenile and domestic relations district court, which would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child, in which case the husband's consent shall not be required. The executed denial of paternity by the putative father shall be sufficient to rebut the presumption that he is the father of the child. If the court is satisfied that the presumption has been rebutted, notice of the adoption shall not be required to be given to the presumed father.

2. After the application of the provisions of subdivision 1, if a birth parent is entitled to a hearing, the birth parent shall be given notice of the date and location of the hearing and be given the opportunity to appear before the juvenile and domestic relations district court. Such hearing may occur subsequent to the proceeding wherein the consenting birth parent appeared but may not be held until 15 days after personal service of notice on the nonconsenting birth parent, or if personal service is unobtainable, 10 days after the completion of the execution of an order of publication against such birth parent. The juvenile and domestic relations district court may appoint counsel for the birth parent(s). If the juvenile and domestic relations district court finds that consent is withheld contrary to the best interests of the child, as set forth in § 63.2-1205, or is unobtainable, it may grant the petition without such consent and enter an order waiving the requirement of consent of the nonconsenting birth parent and transferring custody of the child to the prospective adoptive parents. No further consent or notice shall be required of a birth parent who fails to appear at any scheduled hearing, either in person or by counsel. If the juvenile and domestic relations district court denies the petition, the juvenile and domestic relations district court shall order that any consent given for the purpose of such placement shall be void and, if necessary, the court shall determine custody of the child as between the birth parents.

3. Except as provided in subdivisions 4 and 5, if consent cannot be obtained from at least one birth parent, the juvenile and domestic relations district court shall deny the petition and determine custody of the child pursuant to § 16.1-278.2.

4. If a child has been under the physical care and custody of the prospective adoptive parents and if both birth parents have failed, without good cause, to appear at a hearing to execute consent under this section for which they were given proper notice pursuant to § 16.1-264, the juvenile and domestic relations district court may grant the petition without the consent of either birth parent and enter an order waiving consent and transferring custody of the child to the prospective adoptive parents. Prior to the entry of such an order, the juvenile and domestic relations district court may appoint legal counsel for the birth parents and shall find by clear and convincing evidence (i) that the birth parents were given proper notice of the hearing(s) to execute consent and of the hearing to proceed without their consent; (ii) that the birth parents failed to show good cause for their failure to appear at such hearing(s); and (iii) that pursuant to § 63.2-1205, the consent of the birth parents is withheld contrary to the best interests of the child or is unobtainable. Under this subdivision, the court or the parties may waive the requirement of the simultaneous meeting

under § 63.2-1231 and the requirements of subdivisions A 1, A 3, and A 7 of § 63.2-1232 where the opportunity for compliance is not reasonably available under the applicable circumstances.

5. If both birth parents are deceased, the juvenile and domestic relations district court, after hearing evidence to that effect, may grant the petition without the filing of any consent.

6. No consent shall be required from the birth father of a child placed pursuant to this section when such father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and the child was conceived as a result of such violation, nor shall the birth father be entitled to notice of any of the proceedings under this section.

7. No consent shall be required of a birth father if he denies under oath and in writing the paternity of the child. Such denial of paternity may be withdrawn no more than 10 days after it is executed. Once the child is 10 days old, any executed denial of paternity is final and constitutes a waiver of all rights with the respect to the adoption of the child and cannot be withdrawn.

8. A birth father may consent to the adoption prior to the birth of the child.

9. The juvenile and domestic relations district court shall review each order entered under this section at least annually until such time as the final order of adoption is entered.

10. When there has been an interstate transfer of the child in a parental placement adoption in compliance with Chapter 10 (§ 63.2-1000 et seq.) of this title, all matters relating to the adoption of the child including, but not limited to, custody and parentage shall be determined in the court of appropriate jurisdiction in the state that was approved for finalization of the adoption by the interstate compact authorities.

1989, c. 647, § 63.1-220.3; 1991, cc. 364, 602; 1992, c. 125; 1993, cc. 338, 553; 1995, cc. 772, 826; 1999, c. 1028; 2000, c. 830, § 63.1-219.40; 2002, c. 747; 2005, c. 890; 2006, cc. 825, 848; 2007, cc. 606, 623; 2009, c. 805.

**§ 63.2-1234. When consent is revocable**

Consent shall be revocable as follows:

1. By either consenting birth parent for any reason for up to seven days from its execution; however, such seven-day revocation period may be waived in writing at the time of consent provided that the child is at least 10 days old and the consenting birth parent acknowledges having received independent legal counsel regarding the effect of such waiver. In the case of two consenting birth parents, the waiver by one consenting birth parent shall not affect the right of the second consenting birth parent to retain his seven-day revocation period.

a. Such revocation shall be in writing, signed by the revoking party or counsel of record for the revoking party and shall be filed with the clerk of the juvenile and domestic relations district court in which the petition was filed during the business day of the juvenile and domestic relations district court, within the time period specified in this section. If the revocation period expires on a

Saturday, Sunday, legal holiday or any day on which the clerk's office is closed as authorized by statute, the revocation period shall be extended to the next day that is not a Saturday, Sunday, legal holiday or other day on which the clerk's office is closed as authorized by statute.

b. Upon the filing of a valid revocation within the time period set out in this section, the juvenile and domestic relations district court shall order that any consent given for the purpose of such placement is void and, if necessary, the juvenile and domestic relations district court shall determine custody of the child as between the birth parents.

2. By any party prior to the final order of adoption (i) upon proof of fraud or duress or (ii) after placement of the child in an adoptive home, upon written, mutual consent of the birth parents and prospective adoptive parents.

1989, c. 647, § 63.1-220.3; 1991, cc. 364, 602; 1992, c. 125; 1993, cc. 338, 553; 1995, cc. 772, 826; 1999, c. 1028; 2000, c. 830, § 63.1-219.41; 2002, c. 747; 2006, cc. 825, 848; 2008, c. 662.

**§ 63.2-1235. Adoptive home not in child's best interests**

If the juvenile and domestic relations district court determines from the information provided to it that placement in the prospective adoptive home will be contrary to the best interests of the child, it shall so inform the birth parents. If the birth parents choose not to retain custody of the child nor to designate other prospective adoptive parents, or if the birth parents' whereabouts are not reasonably ascertainable, the juvenile and domestic relations district court shall determine custody of the child.

1989, c. 647, § 63.1-220.3; 1991, cc. 364, 602; 1992, c. 125; 1993, cc. 338, 553; 1995, cc. 772, 826; 1999, c. 1028; 2000, c. 830, § 63.1-219.42; 2002, c. 747.

**§ 63.2-1236. Duty of Department to disseminate information**

The Department shall develop and disseminate information to the public regarding the provisions of parental placement adoptions, including the desirability of initiating the procedures required by § 63.2-1232 as early in the placement and adoption process as possible to ensure that birth parents are aware of the provisions of this law and begin required procedures in a timely manner.

1989, c. 647, § 63.1-220.3; 1991, cc. 364, 602; 1992, c. 125; 1993, cc. 338, 553; 1995, cc. 772, 826; 1999, c. 1028; 2000, c. 830, § 63.1-219.43; 2002, c. 747.

**§ 63.2-1237. Petition for parental placement adoption; jurisdiction; contents**

Proceedings for the parental placement adoption of a minor child and for a change of name of such child shall be instituted only by petition to the circuit court in the county or city in which the petitioner resides or in the county or city where a birth parent has executed a consent pursuant to § 63.2-1233. Such petition may be filed by any natural person who resides in the Commonwealth or is the adopting parent(s) of a child who was subject to a consent proceeding held pursuant to § 63.2-1233. The petition shall ask leave to adopt a minor child not legally the petitioner's by birth and, if it is so desired by the petitioner, also to change the name of such child. In the case of married persons, the petition shall be the joint petition of the husband and wife but, in the event the

child to be adopted is legally the child by birth or adoption of one of the petitioners, such petitioner shall unite in the petition for the purpose of indicating his or her consent to the prayer thereof only. The petition shall contain a full disclosure of the circumstances under which the child came to live, and is living, in the home of the petitioner. Each petition for adoption shall be signed by the petitioner as well as by counsel of record, if any. In any case in which the petition seeks the entry of an adoption order without referral for investigation, the petition shall be under oath.

The petition shall state that the findings required by § 63.2-1232 have been made and shall be accompanied by appropriate documentation supporting such statement, to include copies of documents executing consent and transferring custody of the child to the prospective adoptive parents, and a copy of the report required by § 63.2-1231. The court shall not waive any of the requirements of this paragraph nor any of the requirements of § 63.2-1232 except as allowed pursuant to subsection D of § 63.2-1232 or subdivision 4 of § 63.2-1233.

A single petition for adoption under the provisions of this section shall be sufficient for the concurrent adoption by the same petitioners of two or more children who have the same birth parent or parents; and nothing in this section shall be construed as having heretofore required a separate petition for each of such children.

Code 1950, § 63-348; 1952, c. 550; 1954, c. 489; 1956, c. 300; 1964, c. 459; 1968, c. 578, § 63.1-221; 1970, c. 672; 1973, c. 406; 1975, c. 461; 1978, c. 730; 1983, c. 614; 1988, c. 882; 1989, c. 647; 1991, cc. 76, 602; 1995, cc. 772, 826; 2000, c. 830, § 63.1-219.44; 2002, c. 747; 2006, cc. 825, 848; 2015, c. 529.

**§ 63.2-1238. Forwarding of petition; when investigation and report not required**

A. Upon the filing of the petition, the circuit court shall forward a copy of the petition and all exhibits thereto to the Commissioner and to the local director where the petitioners reside or resided at the time of filing the petition, or had legal residence at the time of the filing of the petition. However, in cases where a licensed child-placing agency has completed a home study, the petition and all exhibits shall be forwarded to the licensed child-placing agency.

B. In parental placement adoptions where consent has been properly executed, no investigation and report pursuant to § 63.2-1208 is required. However, the circuit court may order a thorough investigation of the matter and report in which case the provisions of § 63.2-1208 shall apply.

Code 1950, § 63-349; 1954, c. 489; 1956, c. 489; 1956, c. 187; 1962, c. 603; 1964, c. 429; 1968, cc. 346, 578, § 63.1-223; 1974, cc. 26, 493, 507; 1975, c. 364; 1978, c. 730; 1980, c. 740; 1982, c. 115; 1988, cc. 579, 599, 882; 1989, c. 647; 1992, c. 607; 1993, c. 553; 1995, cc. 772, 826; 2000, c. 830, § 63.1-219.45; 2002, c. 747.

**§ 63.2-1239. Return of copies furnished to counsel**

Any copy of the report required by § 63.2-1208 to be furnished to counsel of record representing the adopting parent or parents shall, upon the entry of a final order of adoption, or other final

disposition of the matter, be returned by such counsel, without having been duplicated, to the clerk of the circuit court in which final disposition of the matter is had, to be disposed of as is required by § 63.2-1246 for the return of the original report.

Code 1950, § 63-350; 1968, c. 578, § 63.1-224; 1974, c. 26; 2000, c. 830, § 63.1-219.46; 2002, c. 747.

### § 63.2-1240. Court issuing order deemed sending agency under Interstate Compact on Placement of Children

When a petitioner moves outside the Commonwealth after the entry of an interlocutory order of adoption but prior to the entry of a final order of adoption and the child was not placed by a child-placing agency, the circuit court issuing the interlocutory order shall be deemed the sending agency for the purposes of the Interstate Compact on the Placement of Children authorized pursuant to the provisions of § 63.2-1000.

1978, c. 733, § 63.1-226.1; 2000, c. 830, § 63.1-219.47; 2002, c. 747.

## Article 4 - STEPPARENT ADOPTION

### § 63.2-1241. Adoption of child by spouse of birth or adoptive parent

A. In cases in which the spouse of a birth parent or parent by adoption who is not the birth parent of a child wishes to adopt the child, the birth parent and his spouse may file a petition for adoption in the circuit court of the county or city where the birth parent and his spouse reside or the county or city where the child resides. The petition shall be the joint petition of the birth parent and his spouse but the birth parent shall unite in the petition for the purpose of indicating consent to the prayer thereof only. The petition shall also state whether the petitioners seek to change the name of the child.

B. The court may order the proposed adoption and change of name without referring the matter to the local director if (i) the birth parent or parent by adoption, other than the birth parent or parent by adoption joining in the petition for adoption, is deceased; (ii) the birth parent or parent by adoption, other than the birth parent or parent by adoption joining in the petition for adoption, consents to the adoption in writing and under oath; (iii) the acknowledged, adjudicated, presumed, or putative father denies paternity of the child; (iv) the birth mother swears under oath and in writing that the identity of the father is not reasonably ascertainable; (v) the child is the result of surrogacy and the birth parent, other than the birth parent joining in the petition, consents to the adoption in writing; (vi) the parent by adoption joining in the petition was not married at the time the child was adopted; or (vii) the child is 14 years of age or older and has lived in the home of the person desiring to adopt the child for at least five years. However, if the court in its discretion determines that there should be an investigation before a final order of adoption is entered, the court shall refer the matter to the local director for an investigation and report to be completed within such time as the circuit court designates. If an investigation is ordered, the cir-

cuit court shall forward a copy of the petition and all exhibits thereto to the local director and the provisions of § 63.2-1208 shall apply.

C. If an acknowledged, adjudicated, presumed, or putative birth parent or parent by adoption of a child refuses to consent to the adoption of a child by the spouse of the other birth parent or parent by adoption of the child, the court shall determine whether consent to the adoption is withheld contrary to the best interests of the child. If the court determines that consent to the adoption is withheld contrary to the best interests of the child, the court may order the adoption and change of name without referring the matter to the local director. However, if the court in its discretion determines that there should be an investigation before a final order of adoption is entered, the circuit court shall refer the matter to the local director for an investigation and report to be completed within such time as the circuit court designates. The order of reference may include a requirement that the local director investigate factors relevant to determining whether consent of a birth parent is withheld contrary to the best interests of the child, including factors set forth in § 63.2-1205. If an investigation is ordered, the circuit court shall forward a copy of the petition and all exhibits thereto to the local director and the provisions of § 63.2-1208 shall apply.

D. In any case involving adoption of a child by a stepparent pursuant to this section, the court may waive appointment of a guardian ad litem for the child.

Code 1950, § 63-356.1; 1950, p. 626; 1956, c. 300; 1968, c. 578, § 63.1-231; 1974, c. 421; 1975, c. 364; 1977, c. 526; 1979, c. 339; 1986, cc. 481, 482; 1987, c. 482; 1992, c. 607; 1995, cc. 772, 826; 2000, c. 830, § 63.1-219.48; 2002, c. 747; 2006, cc. 825, 848; 2007, cc. 606, 623; 2010, c. 306; 2012, c. 424.

### § 63.2-1242. Investigation and report at discretion of circuit court

For adoptions under this article, an investigation and report shall be undertaken only if the circuit court in its discretion determines that there should be an investigation before a final order of adoption is entered. If the circuit court makes such a determination, it shall refer the matter to the local director for an investigation and report to be completed within such time as the circuit court designates. If an investigation is ordered, the circuit court shall forward a copy of the petition and all exhibits thereto to the local director and the provisions of § 63.2-1208 shall apply.

Code 1950, § 63-356.1; 1950, p. 626; 1956, c. 300; 1968, c. 578, § 63.1-231; 1974, c. 421; 1975, c. 364; 1977, c. 526; 1979, c. 339; 1986, cc. 481, 482; 1987, c. 482; 1992, c. 607; 1995, cc. 772, 826; 2000, c. 830, § 63.1-219.49; 2002, c. 747.

## Article 4.1 - CLOSE RELATIVE ADOPTION

### § 63.2-1242.1. Close relative adoption

A. For the purposes of this chapter, a "close relative placement" shall be an adoption by the child's grandparent, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt.

B. In a close relative placement the court may accept the written and signed consent of the birth parent(s) that is signed under oath and acknowledged by an officer authorized by law to take such acknowledgements.

2006, cc. 825, 848.

**§ 63.2-1242.2. Close relative adoption; child in home less than three years**

A. When the child has continuously resided in the home or has been in the continuous physical custody of the prospective adoptive parent(s) who is a close relative for less than three years, the adoption proceeding, including court approval of the home study, shall commence in the juvenile and domestic relations district court pursuant to the parental placement adoption provisions of this chapter with the following exceptions:

1. The birth parent(s)' consent does not have to be executed in juvenile and domestic relations district court in the presence of the prospective adoptive parents.

2. The simultaneous meeting specified in § 63.2-1231 is not required.

3. No hearing is required for this proceeding.

B. Upon the juvenile and domestic relations district court issuing an order accepting consents or otherwise dealing with birth parents rights and appointing the close relative(s) custodians of the child, the close relative(s) may file a petition in the circuit court as provided in Article 1 (§ 63.2-1200 et seq.) of this chapter.

C. For adoptions under this section:

1. An order of reference, an investigation and a report shall not be made if the home study report is filed with the circuit court unless the circuit court in its discretion requires an investigation and report to be made.

2. The circuit court may omit the probationary period and the interlocutory order and enter a final order of adoption when the court is of the opinion that the entry of an order would otherwise be proper.

3. If the circuit court determines that there is a need for an additional investigation, it shall refer the matter to the licensed child-placing agency that drafted the home study report for an investigation and report, which shall be completed within such times as the circuit court designates.

4. The circuit court may waive appointment of a guardian ad litem for the child.

2006, cc. 825, 848; 2010, c. 306.

**§ 63.2-1242.3. Close relative placement; child in home for three years or more**

When the child has continuously resided in the home or has been in the continuous physical custody of the prospective adoptive parent(s) who is a close relative for three or more years, the parental placement provisions of this chapter shall not apply and the adoption proceeding shall commence in the circuit court.

For adoptions under this section:

1. An order of reference, an investigation and a report shall not be made unless the circuit court in its discretion shall require an investigation and report to be made.

2. The circuit court may omit the probationary period and the interlocutory order and enter a final order of adoption when the court is of the opinion that the entry of an order would otherwise be proper.

3. If the circuit court determines the need for an investigation, it shall refer the matter to the local director of the department of social services for an investigation and report, which shall be completed in such time as the circuit court designates.

4. The circuit court may waive appointment of a guardian ad litem for the child.

2006, cc. 825, 848; 2010, c. 306.

## Article 5 - ADULT ADOPTION

### § 63.2-1243. Adoption of certain persons eighteen years of age or over

A petition may be filed in circuit court by any natural person who is a resident of this Commonwealth (i) for the adoption of a stepchild eighteen years of age or over to whom he has stood in loco parentis for a period of at least three months; (ii) for the adoption of a close relative, as defined in § 63.2-1242.1, eighteen years of age or older; (iii) for the adoption of any person eighteen years of age or older who is the birth child of the petitioner or who had resided in the home of the petitioner for a period of at least three months prior to becoming eighteen years of age; or (iv) for the adoption of any person eighteen years of age or older, for good cause shown, provided that the person to be adopted is at least fifteen years younger than the petitioner and the petitioner and the person to be adopted have known each other for at least one year prior to the filing of the petition for adoption. Proceedings in any such case shall conform as near as may be to proceedings for the adoption of a minor child under this chapter except that:

(a) No consent of either parent shall be required; and

(b) The consent of the person to be adopted shall be required in all cases.

Any interlocutory or final order issued in any case under this section shall have the same effect as other orders issued under this chapter; and in any such case the word "child" in any other section of this chapter shall be construed to refer to the person whose adoption is petitioned for under this section. The entry of a final order of adoption pursuant to this section which incorporates a change of name shall be deemed to meet the requirements of § 8.01-217.

The provisions of this section shall apply to any person who would have been eligible for adoption hereunder prior to July 1, 1972.

Code 1950, § 63-348.1; 1950, p. 441; 1954, c. 489; 1964, c. 139; 1968, c. 578, § 63.1-222; 1972, c. 823; 1974, c. 337; 1979, c. 339; 1985, cc. 298, 300; 1988, c. 53; 1995, cc. 772, 826; 2000, c. 830, § 63.1-219.50; 2001, c. 236; 2002, c. 747; 2006, cc. 825, 848.

**§ 63.2-1244. Investigation and report at discretion of circuit court; exception**

For adoptions under this article, an investigation and report shall not be made unless the circuit court in its discretion so requires. However, if a petition is filed for the adoption of any person eighteen years of age or older under clause (iv) of § 63.2-1243, the circuit court shall require an investigation and report to be made. If an investigation is required, the circuit court shall forward a copy of the petition and all exhibits to the local director and the provisions of § 63.2-1208 shall apply.

Code 1950, § 63-348.1; 1950, p. 441; 1954, c. 489; 1964, c. 139; 1968, c. 578, § 63.1-222; 1972, c. 823; 1974, c. 337; 1979, c. 339; 1985, cc. 298, 300; 1988, c. 53; 1995, cc. 772, 826; 2000, c. 830, § 63.1-219.51; 2002, c. 747.

## Article 6 - RECORDS

**§ 63.2-1245. Separate order book, file and index of adoption cases; to whom available; permanent retention**

Each circuit court clerk shall establish and maintain a separate and exclusive order book, file and index of adoption cases, none of which shall be exposed to public view but which shall be made available by such clerk to attorneys of record, social service officials, court officials, and to such other persons as the circuit court shall direct in specific cases by order of the circuit court entered in accordance with § 63.2-1246.

Such records shall be retained permanently in original form or on microfilm or converted to an electronic format in accordance with § 17.1-213. Such microfilm and microphotographic process and equipment shall meet state archival standards pursuant to § 42.1-82; such electronic format shall follow state electronic records guidelines; and such records shall be available for examination to those persons listed in this section. The clerk shall further provide security negative copies of any such microfilmed materials for storage in The Library of Virginia.

Code 1950, § 63-359.1; 1952, c. 420; 1968, cc. 35, 578, § 63.1-235; 1981, cc. 435, 637; 1994, c. 64; 2000, c. 830, § 63.1-219.52; 2002, c. 747; 2013, c. 263.

**§ 63.2-1246. Disposition of reports; disclosure of information as to identity of birth family**

Upon the entry of a final order of adoption or other final disposition of the matter, the clerk of the circuit court in which it was entered shall forthwith transmit to the Commissioner all reports made in connection with the case, and the Commissioner shall preserve such reports and all other collateral reports, information and recommendations in a separate file. Except as provided in subsections C, D and E of § 63.2-1247, nonidentifying information from such adoption file shall not be open to inspection, or be copied, by anyone other than the adopted person, if eighteen years of age or over, or licensed or authorized child-placing agencies providing services to the child or the

adoptive parents, except upon the order of a circuit court entered upon good cause shown. However, if the adoptive parents, or either of them, is living, the adopted person shall not be permitted to inspect the home study of the adoptive parents unless the Commissioner first obtains written permission to do so from such adoptive parent or parents.

No identifying information from such adoption file shall be disclosed, open to inspection or made available to be copied except as provided in subsections A, B and E of § 63.2-1247 or upon application of the adopted person, if eighteen years of age or over, to the Commissioner, who shall designate the person or agency that made the investigation to attempt to locate and advise the birth family of the application. The designated person or agency shall report the results of the attempt to locate and advise the birth family to the Commissioner, including the relative effects that disclosure of the identifying information may have on the adopted person, the adoptive parents, and the birth family. The adopted person and the birth family may submit to the Commissioner, and the Commissioner shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party. Upon a showing of good cause, the Commissioner shall disclose the identifying information. If the Commissioner fails to designate a person or agency to attempt to locate the birth family within thirty days of receipt of the application, or if the Commissioner denies disclosure of the identifying information after receiving the designated person's or agency's report, the adopted person may apply to the circuit court for an order to disclose such information. Such order shall be entered only upon good cause shown after notice to and opportunity for hearing by the applicant for such order and the person or agency that made the investigation. "Good cause" when used in this section shall mean a showing of a compelling and necessitous need for the identifying information.

An eligible adoptee who is a resident of Virginia may apply for the court order provided for herein to (i) the circuit court of the county or city where the adoptee resides or (ii) the circuit court of the county or city where the central office of the Department is located. An eligible adoptee who is not a resident of Virginia shall apply for such a court order to the circuit court of the county or city where the central office of the Department is located.

If the identity and whereabouts of the adoptive parents and the birth parents are known to the person or agency, the circuit court may require the person or agency to advise the adoptive parents and the birth parents of the pendency of the application for such order. In determining good cause for the disclosure of such information, the circuit court shall consider the relative effects of such action upon the adopted person, the adoptive parents and the birth parents. The adopted person and the birth family may submit to the circuit court, and the circuit court shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party.

When consent of the birth parents is not obtainable, due to the death of the birth parents or mental incapacity of the birth parents, the Commissioner shall, upon application of the adult adopted person and a showing of good cause, disclose the identifying information to the adult adopted

person. If the Commissioner denies disclosure of the identifying information, the adult adopted person may apply to the circuit court for an order to disclose such information and the circuit court may release identifying information to the adult adopted person. In making this decision, the circuit court shall consider the needs and concerns of the adopted person and the birth family if such information is available, the actions the agency took to locate the birth family, the information in the agency's report and the recommendation of the agency.

The Commissioner, person or agency may charge a reasonable fee to cover the costs of processing requests for nonidentifying information.

Upon entry of a final order of adoption or other final disposition of a matter involving the placement of a child by a licensed child-placing agency or a local board or an investigation by the local director of a placement for adoption of a child, the agency or local board shall transmit to the Commissioner all reports and collateral information in connection with the case, which shall be preserved by the Commissioner in accordance with this section.

Code 1950, § 63-360; 1964, c. 429; 1968, c. 578, § 63.1-236; 1970, c. 672; 1972, c. 823; 1976, c. 366; 1977, c. 556; 1978, cc. 256, 730; 1979, c. 43; 1988, c. 221; 1992, c. 607; 1993, c. 962; 1994, cc. 856, 942; 1995, cc. 772, 826; 2000, c. 830, § 63.1-219.53; 2002, c. 747; 2014, c. 127.

**§ 63.2-1247. Disclosure to birth family; adoptive parents; medical, etc., information; exchange of information; open records in parental placement adoptions**

A. Where the adoption is finalized on or after July 1, 1994, and the adopted person is twenty-one years of age or over, the adopted person's birth parents and adult birth siblings may apply to the Commissioner for the disclosure of identifying information from the adoption file. The Commissioner shall designate the person or agency that made the investigation to attempt to locate and advise the adopted person of the application. The designated person or agency shall report the results of the attempt to locate and advise the adopted person to the Commissioner, including the relative effects that disclosure of the identifying information may have on the adopted person, the adoptive parents, and the birth family. The adopted person and the birth family may submit to the Commissioner, and the Commissioner shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party. Upon a showing of good cause, the Commissioner shall disclose the identifying information. If the Commissioner fails to designate a person or agency to attempt to locate the adopted person within thirty days of receipt of the application, or if the Commissioner denies disclosure of the identifying information after receiving the designated person's or agency's report, the birth parents or adult birth siblings, whoever applied, may apply to the circuit court for an order to disclose such information. Such order shall be entered only upon good cause shown after notice to and opportunity for hearing by the applicant for such order and the person or agency that made the investigation. "Good cause" when used in this section shall mean a showing of a compelling and necessitous need for the identifying information.

A birth parent or adult birth sibling who is a resident of Virginia may apply for the court order provided for herein to (i) the circuit court of the county or city where the birth parent or adult birth sibling resides or (ii) the circuit court of the county or city where the central office of the Department is located. A birth parent or adult birth sibling who is not a resident of Virginia shall apply for such a court order to the circuit court of the county or city where the central office of the Department is located.

If the identity and whereabouts of the adopted person and adoptive parents are known to the person or agency, the circuit court may require the person or agency to advise the adopted person and adoptive parents of the pendency of the application for such order. In determining good cause for the disclosure of such information, the circuit court shall consider the relative effects of such action upon the adopted person, the adoptive parents and the birth family. The adopted person and the birth family may submit to the circuit court, and the circuit court shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party.

When consent of the adopted person is not obtainable, due to the death or mental incapacity of the adopted person, the circuit court may release identifying information to the birth parents or adult birth siblings. In making this decision, the circuit court shall consider the needs and concerns of the birth parents or adult birth siblings and the adoptive family if such information is available, the actions the agency took to locate the adopted person, the information in the agency's report and the recommendation of the agency.

B. Where the adoption is finalized on or after July 1, 1994, and the adopted person is under eighteen years of age, the adoptive parents or other legal custodian of the child may apply to the Commissioner for the disclosure of identifying information about the birth family. The Commissioner shall designate the person or agency that made the investigation to attempt to locate and advise the birth family of the application. The designated person or agency shall report the results of the attempt to locate and advise the birth family to the Commissioner, including the relative effects that disclosure of the identifying information may have on the adopted person, the adoptive parents or other legal custodian, and the birth family. The adoptive parents, legal custodian and birth family may submit to the Commissioner, and the Commissioner shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party. Upon a showing of good cause, the Commissioner shall disclose the identifying information. If the Commissioner fails to designate a person or agency to attempt to locate the birth family within thirty days of receipt of the application, or if the Commissioner denies disclosure of the identifying information after receiving the designated person's or agency's report, the adoptive parents or legal custodian, whoever applied, may apply to the circuit court for an order to disclose such information. Such order shall be entered only upon good cause shown after notice to and opportunity for hearing by the applicant for such order and the person or agency that made the

investigation. "Good cause" when used in this section shall mean a showing of a compelling and necessitous need for the identifying information.

An adoptive parent or legal custodian who is a resident of Virginia may apply for the court order provided for herein to (i) the circuit court of the county or city where the adoptive parent or legal custodian resides or (ii) the circuit court of the county or city where the central office of the Department is located. An adoptive parent or legal custodian who is not a resident of Virginia shall apply for such a court order to the circuit court of the county or city where the central office of the Department is located.

If the identity and whereabouts of the birth parents are known to the person or agency, the circuit court may require the person or agency to advise the birth parents of the pendency of the application for such order. In determining good cause for the disclosure of such information, the circuit court shall consider the relative effects of such action upon the adopted person, the adoptive parents or legal custodian and the birth parents. The birth family may submit to the circuit court, and the circuit court shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party.

When consent of the birth family is not obtainable, due to the death of the birth parents or mental incapacity of the birth parents, the circuit court may release identifying information to the adoptive parents or legal custodian. In making this decision, the circuit court shall consider the needs and concerns of the adoptive parents or legal custodian and the birth family if such information is available, the actions the agency took to locate the birth family, the information in the agency's report and the recommendation of the agency.

C. In any case where a physician or licensed mental health provider submits a written statement, in response to a request from the adult adoptee, adoptive parent, birth parent or adult birth siblings, indicating that it is critical that medical, psychological or genetic information be conveyed, and states clearly the reasons why this is necessary, the agency that made the investigation shall make an attempt to inform the adult adoptee, adoptive parents, birth parents or adult birth siblings, whichever is applicable, of the information. The Commissioner shall provide information from the adoption record to the searching agency if necessary to facilitate the search. Confidentiality of all parties shall be maintained by the agency.

D. In cases where at least one of the adoptive parents and one of the birth parents agree in writing to allow the agency involved in the adoption to exchange nonidentifying information and pictures, the agency may exchange this information with such adoptive parents and birth parents when the whereabouts of the adoptive parents and birth parents is known or readily accessible. Such agreement may be entered into or withdrawn by either party at any time or may be withdrawn by the adult adoptee.

E. In parental placement adoptions, where the consent to the adoption was executed on or after July 1, 1994, the entire adoption record shall be open to the adoptive parents, the adoptee who is eighteen years of age or older, and a birth parent who executed a written consent to the adoption.

1994, cc. 856, 942, § 63.1-236.01; 1995, cc. 772, 826; 2000, c. 830, § 63.1-219.54; 2002, c. 747.

**§ 63.2-1248. Fees for home studies, investigations, visitations and reports**

Notwithstanding the provisions of § 17.1-275, the circuit court with jurisdiction over any adoption matter, or the person, agency, or child-placing agency that attempts to locate the birth family pursuant to § 63.2-1246 or subsection B of § 63.2-1247, or that attempts to locate the adult adoptee pursuant to subsection A of § 63.2-1247, shall assess a fee against the petitioner, or applicant and, in the case of local departments, shall assess such fee in accordance with regulations and fee schedules established by the Board, for home studies, investigations, visits and reports provided by the appropriate local department, person, or agency pursuant to §§ 20-160, 63.2-1208, 63.2-1212, 63.2-1231, 63.2-1238 or § 63.2-1246. The Board shall adopt regulations and fee schedules, which shall include (i) standards for determining the petitioner's or applicant's ability to pay and (ii) a scale of fees based on the petitioner's or applicant's income and family size and the actual cost of the services provided. The fee charged shall not exceed the actual cost of the service. The fee shall be paid to the appropriate local department, person, or agency and a receipt therefor shall be provided to the circuit court, or to the Commissioner if pursuant to § 63.2-1246 or § 63.2-1247, prior to the acceptance of parental consent, entry of any final order, or release of identifying information by the Commissioner, and no court shall accept parental consent or enter any final order and the Commissioner shall not release any identifying information until proof of payment of such fees has been received.

1987, c. 5, § 63.1-236.1; 1989, c. 214; 1990, cc. 101, 297; 1991, c. 600; 1992, c. 607; 1995, cc. 772, 826; 2000, c. 830, § 63.1-219.55; 2002, c. 747.

## Article 7 - PUTATIVE FATHER REGISTRY

**§ 63.2-1249. Establishment of Registry**

A. A Putative Father Registry is hereby established in the Department of Social Services.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Putative Father Registry Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys collected under § 63.2-1201 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund by shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of administration of the Putative Father Registry. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner or his designee.

2006, c. 825.

**§ 63.2-1250. Registration; notice; form**

A. Except as otherwise provided in subsection C, a man who desires to be notified of a placement of a child by a local board pursuant to § 63.2-900, a proceeding for adoption, or a proceeding for termination of parental rights regarding a child that he may have fathered shall register with the Putative Father Registry before the birth of the child or within 10 days after the birth. A registrant shall promptly notify the registry of any change in the information registered including but not limited to change of address. The Department shall incorporate all new information received into its records but is not required to obtain current information for incorporation in the registry.

B. A man will not prejudice any rights by failing to register if:

1. A father-child relationship between the man and the child has been established pursuant to § 20-49.1, 20-49.8, or if the man is a presumed father as defined in § 63.2-1202; or

2. The man commences a proceeding to adjudicate his paternity before a petition to accept consent or waive adoption consent is filed in the juvenile and domestic relations district court, or a petition for adoption or a petition for the termination of his parental rights is filed with the court.

C. Failure to register pursuant to subsection A shall waive all rights of a man who is not an acknowledged, presumed, or adjudicated father to withhold consent to an adoption proceeding unless the man was led to believe through the birth mother's fraud that (i) the pregnancy was terminated or the mother miscarried when in fact the baby was born or (ii) that the child died when in fact the child is alive. Upon the discovery of the fraud, the man shall register with the Putative Father Registry within 10 days.

D. The child-placing agency or adoptive parent(s) shall give notice of a placement of a child by a local board pursuant to § 63.2-900, a proceeding for adoption, or a proceeding for termination of parental rights regarding a child to a registrant who has timely registered pursuant to subsection A. Notice shall be given pursuant to the requirements of this chapter or § 16.1-277.01 for the appropriate adoption proceeding.

E. Any man who has engaged in sexual intercourse with a woman is deemed to be on legal notice that a child may be conceived and the man is entitled to all legal rights and obligations resulting therefrom. Lack of knowledge of the pregnancy does not excuse failure to timely register. In the event that the identity and whereabouts of the birth father are reasonably ascertainable, written notice of the existence of an adoption plan and the availability of registration with the Putative Father Registry shall be provided by personal service or by certified mailing to the man's last known address. The man shall have no more than 10 days from the date of such personal service or certified mailing to register. The personal service or certified mailing may be done either prior to or after the birth of the child.

F. The Department shall prepare a form for registering with the agency that shall require (i) the registrant's name, date of birth and social security number; (ii) the registrant's driver's license number and state of issuance; (iii) the registrant's home address, telephone number and employer; (iv) the name, date of birth, ethnicity, address and telephone number of the putative mother, if known; (v) the state of conception; (vi) the place and date of birth of the child, if known; (vii) the name and gender of the child, if known; and (viii) the signature of the registrant. No form for registering with the Putative Father Registry pursuant to this subsection shall be complete unless signed by the registrant.

G. The form shall also state that (i) timely registration entitles the registrant to notice of a proceeding for adoption of the child or termination of the registrant's parental rights, (ii) registration does not commence a proceeding to establish paternity, (iii) the information disclosed on the form may be used against the registrant to establish paternity, (iv) services to assist in establishing paternity are available to the registrant through the Department, (v) the registrant should also register in another state if conception or birth of the child occurred in another state, (vi) information on registries of other states may be available from the Department, (vii) the form is signed under penalty of perjury, and (viii) procedures exist to rescind the registration of a claim of paternity.

2006, c. 825; 2009, c. 805; 2012, c. 424; 2015, c. 531.

**§ 63.2-1251. Furnishing information; confidentiality; penalty**

A. The Department is not required to locate the mother of a child who is the subject of a registration, but the Department shall send a copy of the notice of registration to the mother if an address is provided.

B. Information contained in the registry is confidential and may only be released on request to:

1. A court or a person designated by the court;

2. The mother of the child who is the subject of the registration;

3. An agency authorized by law to receive such information;

4. A licensed child-placing agency;

5. A support enforcement agency;

6. The child's guardian ad litem;

7. A party or the party's attorney of record in an adoption proceeding, custody proceeding, paternity proceeding, or in a proceeding of termination of parental rights, regarding a child who is the subject of the registration;

8. A putative father registry in another state; and

9. A local department of social services for the purpose of establishing paternity of a child accepted for placement by a local board pursuant to § 63.2-900.

C. Information contained in the registry shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

D. An individual who intentionally releases information from the registry to an individual or agency not authorized to receive the information in this section is guilty of a Class 4 misdemeanor.

2006, c. 825; 2012, c. 424; 2015, c. 531.

**§ 63.2-1252. Search of registry**

A. If no father-child relationship has been established pursuant to § 20-49.1, a petitioner for adoption shall obtain from the Department a certificate that a search of the Putative Father Registry was performed. If the conception or birth of the child occurred in another state, a petitioner for adoption shall obtain a certificate from that state indicating that a search of the putative father registry was performed, if that state has a putative father registry.

B. The Department shall furnish to the requester a certificate of search of the registry upon the request of an individual, court, or agency listed in § 63.2-1251. Any such certificate shall be signed on behalf of the Department and state that a search has been made of the registry and a registration containing the information required to identify the registrant has been found and is attached to the certificate of search or has not been found. Within four business days from the receipt of the request, the Department shall mail the certificate to the requestor by United States mail. Upon request of the requestor and payment of any additional costs, the Department shall have the certificate delivered to the requestor by overnight mail, in person, by messenger, by facsimile or other electronic communication. The Department's certificate or an appropriate certificate from another state shall be sufficient proof the registry was searched.

C. A petitioner shall file the certificate of search with the court before a proceeding for adoption of, or termination of parental rights regarding, a child may be concluded.

D. A certificate of search of the Putative Father Registry is admissible in a proceeding for adoption of, or termination of parental rights regarding, a child and, if relevant, in other legal proceedings.

2006, c. 825; 2015, c. 531.

**§ 63.2-1253. Duty to publicize registry**

A. The Department shall produce and distribute a pamphlet or other publication informing the public about the Putative Father Registry including (i) the procedures for voluntary acknowledgement of paternity, (ii) the consequences of acknowledgement and failure to acknowledge paternity pursuant to § 20-49.1, (iii) a description of the Putative Father Registry including to whom and under what circumstances it applies, (iv) the time limits and responsibilities for filing, (v) paternal rights and associated responsibilities, and (vi) other appropriate provisions of this article.

B. Such pamphlet or publication shall include a detachable form that meets the requirements of subsection F of § 63.2-1250, is suitable for United States mail, and is addressed to the Putative

Father Registry. Such pamphlet or publication shall be made available for distribution at all offices of the Department of Health and all local departments of social services. The Department shall also provide such pamphlets or publications to hospitals, libraries, medical clinics, schools, universities, and other providers of child-related services upon request.

C. The Department shall provide information to the public at large by way of general public service announcements, or other ways to deliver information to the public about the Putative Father Registry and its services.

2006, c. 825.

## Chapter 13 - ADOPTION ASSISTANCE FOR CHILDREN WITH SPECIAL NEEDS

### § 63.2-1300. Purpose and intent of adoption assistance; eligibility

The purpose of adoption assistance is to facilitate adoptive placements and ensure permanency for children with special needs. Adoption assistance may include Title IV-E maintenance payments, state-funded maintenance payments, state special services payments and nonrecurring expense payments made pursuant to requirements set forth in this chapter.

A child with special needs is a child who is a citizen or legal resident of the United States who is unlikely to be adopted within a reasonable period of time due to one or more of the following factors:

1. Physical, mental or emotional condition existing prior to adoption;

2. Hereditary tendency, congenital problem or birth injury leading to substantial risk of future disability; or

3. Individual circumstances of the child related to age, racial or ethnic background or close relationship with one or more siblings.

A child with special needs will be eligible for adoption assistance if (i) the child cannot or should not be returned to the home of his parents and (ii) reasonable efforts to place the child in an appropriate adoptive home without the provision of adoption assistance have been unsuccessful. An exception may be made to the requirement that efforts be made to place the child in an adoptive home without the provision of adoption assistance when the child has developed significant emotional ties with his foster parents while in their care and that the foster parents wish to adopt the child.

1974, c. 507, § 63.1-238.1; 1978, c. 536; 1981, c. 359; 1987, cc. 650, 681; 2000, cc. 290, 830, § 63.1-238.03; 2002, c. 747; 2010, c. 271.

### § 63.2-1301. Types of adoption assistance payments

A. Title IV-E maintenance payments shall be made to the adoptive parents on behalf of an adopted child placed if it is determined that the child is a child with special needs and the child meets the requirements set forth in § 473 of Title IV-E of the Social Security Act (42 U.S.C. § 673).

B. State-funded maintenance payments shall be made to the adoptive parents on behalf of an adopted child if it is determined that the child does not meet the requirements set forth in § 473 of Title IV-E of the Social Security Act (42 U.S.C. § 673) but the child is a child with special needs. For this purpose of state-funded maintenance payments only, a child with special needs may include:

1. A child for whom the factors set forth in subdivision 1 or 2 of § 63.2-1300 are present at the time of adoption but are not diagnosed until after the final order of adoption, when no more than one year has elapsed from the date of diagnosis; or

2. A child who has lived with his foster parents for at least 12 months and has developed significant emotional ties with his foster parents while in their care, when the foster parents wish to adopt the child and state-funded maintenance payments are necessary to enable the adoption.

C. State special services payments shall be made to the adoptive parents and other persons on behalf of a child in the custody of the local board or in the custody of a licensed child-placing agency and placed for adoption, pursuant to this chapter, if it is determined that:

1. The child is a child with special needs; and

2. The adoptive parents are capable of providing the permanent family relationships needed by the child in all respects except financial.

D. Nonrecurring expense payments shall be made to the adoptive parents for expenses related to the adoption including reasonable and necessary adoption fees, court costs, attorney fees and other legal service fees, as well as any other expenses that are directly related to the legal adoption of a child with special needs including costs related to the adoption study, any health and psychological examinations, supervision of the placement prior to adoption and any transportation costs and reasonable costs of lodging and food for the child and the adoptive parents when necessary to complete the placement or adoption process for which the adoptive parents carry ultimate liability for payment and that have not been reimbursed from any other source, as set forth in 45 C.F.R. § 1356.41 . However, the total amount of nonrecurring expense payments made to adoptive parents for the adoption of a child shall not exceed $2,000 or an amount established by federal law.

1974, c. 507, § 63.1-238.2; 1982, c. 171; 1983, c. 292; 1987, cc. 650, 681; 2002, c. 747; 2010, c. 271.

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

A. Adoption assistance payments may include:

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

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

a. Medical, surgical and dental care;

b. Hospitalization;

c. Individual remedial educational services;

d. Psychological and psychiatric treatment;

e. Speech and physical therapy; and

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

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

B. Adoption assistance payments shall cease when the child with special needs reaches the age of 18 years. If it is determined that the child has a mental or physical handicap, or an educational delay resulting from such handicap, warranting the continuation of assistance, adoption assistance payments may be made until the child reaches the age of 21 years.

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

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

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

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

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

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

1974, c. 507, § 63.1-238.3; 1976, c. 216; 1977, c. 533; 1978, c. 536; 1980, c. 280; 1981, c. 359; 1982, c. 171; 1985, c. 568; 1987, cc. 650, 681; 1988, c. 417; 1989, c. 191; 2000, c. 290; 2002, c. 747; 2010, c. 271.

**§ 63.2-1303. Qualification for adoption assistance payments**

Qualification for adoption assistance payments shall be determined by the local board in response to an application for adoption assistance submitted in accordance with regulations adopted by the Board.

1974, c. 507, § 63.1-238.4; 1976, c. 216; 1981, c. 359; 1987, cc. 650, 681; 2002, c. 747; 2010, c. 271.

**§ 63.2-1304. Appeal to Commissioner regarding adoption assistance**

Any applicant for or recipient of adoption assistance aggrieved by any decision of a local board or licensed child-placing agency in granting, denying, changing or discontinuing adoption assistance, may, within 30 days after receiving written notice of such decision, appeal therefrom to the Commissioner. Any applicant or recipient aggrieved by the failure of the local board or licensed child-placing agency to make a decision within a reasonable time may ask for review by the Commissioner. The Commissioner may delegate the duty and authority to duly qualified hearing officers to consider and make determinations on any appeal or review. The Commissioner shall provide an opportunity for a hearing, reasonable notice of which shall be given in writing to the applicant or recipient and to the proper local board in such manner and form as the Commissioner may prescribe. The Commissioner may make or cause to be made an investigation of the facts. The Commissioner shall give fair and impartial consideration to the testimony of witnesses, or other evidence produced at the hearing, reports of investigation of the local board and local director or licensed child-placing agency or of investigations made or caused to be made by the Commissioner, or any facts that the Commissioner may deem proper to enable him to decide fairly the appeal or review. The decision of the Commissioner shall be binding and considered a final agency

action for purposes of judicial review of such action pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

2003, c. 467.

## Chapter 14 - UNIFORM ACT ON ADOPTION AND MEDICAL ASSISTANCE

### § 63.2-1400. Not Set Out

Not set out. ( 2002, c. 747 .)

### § 63.2-1401. Compacts authorized

The Governor is authorized to develop, participate in the development of, negotiate and enter into one or more interstate compacts on behalf of this Commonwealth with other states to implement one or more of the purposes set forth in this chapter. When so entered into, and for so long as it remains in force, the compact shall have the force and effect of law.

1988, c. 154, § 63.1-238.7; 2002, c. 747.

### § 63.2-1402. Definitions

For the purposes of this chapter:

"Adoption assistance state" means the state that is signatory to an adoption assistance agreement in a particular case.

"Residence state" means the state of which the child is a resident by virtue of the residence of the adoptive parents.

"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States.

1988, c. 154, § 63.1-238.8; 2002, c. 747.

### § 63.2-1403. Contents of compacts

A. A compact entered into pursuant to the authority conferred by this chapter shall have the following content:

1. A provision making it available for joinder by all states.

2. A provision or provisions for withdrawal from the compact upon written notice to the parties, but with a period of one year between the date of the notice and the effective date of the withdrawal.

3. A requirement that the protections afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who, on the effective date of the withdrawal, are receiving adoption assistance from a party state other than the one in which they are resident and have their principal place of abode.

4. A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parents and the child welfare agency of the state which undertakes to provide the adoption assistance, and further, that any such agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents and the state agency providing the adoption assistance.

5. Such other provisions as may be appropriate to implement the proper administration of the compact.

B. A compact entered into pursuant to the authority conferred by this chapter may contain the following provisions in addition to those required pursuant to subsection A:

1. Provisions establishing procedures and entitlements to medical, developmental, child care or other social services for the child in accordance with applicable laws, even though the child and the adoptive parents are in a state other than the one responsible for or providing the services or the funds to defray part or all of the costs thereof.

2. Such other provisions as may be appropriate or incidental to the proper administration of the compact.

1988, c. 154, § 63.1-238.9; 2002, c. 747.

**§ 63.2-1404. Medical assistance; penalties**

A. A child with special needs resident in this Commonwealth who is the subject of an adoption assistance agreement with another state shall be entitled to receive a medical assistance identification from this Commonwealth upon the filing in the Department of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with regulations of the Department, the adoptive parents shall be required at least annually to show that the agreement is still in force or has been renewed.

B. The Department of Medical Assistance Services shall consider the holder of medical assistance identification pursuant to this section as any other holder of a medical assistance identification under the laws of this Commonwealth and shall process and make payment on claims on account of such holder in the same manner and pursuant to the same conditions and procedures as for other recipients of medical assistance.

C. The Department shall provide coverage and benefits not provided by the state plan for medical assistance in the residence state for a child who is in another state and who is covered by an adoption assistance agreement made in Virginia to the extent required by the agreement. However, there shall be no reimbursement for services or benefit amounts covered under any insurance or other third party medical contract or arrangement held by the child or the adoptive parents. The Department of Medical Assistance Services shall adopt regulations implementing this subsection. The additional coverages and benefit amounts provided pursuant to this subsection shall be for services for which there is no federal financial contribution or which, if federally aided, are not

provided by the residence state. Such regulations shall include procedures to be followed in obtaining prior approvals for services when such approval is required for the assistance.

D. The submission of any claim for payment or reimbursement for services or benefits pursuant to this section or the making of any statement in connection therewith, which claim or statement the maker knows or should know to be false, misleading or fraudulent shall be punishable as perjury and shall also be subject to a fine of not more than $10,000, or imprisonment for not more than two years, or both.

E. The provisions of this section shall apply only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this Commonwealth under which the other state provides medical assistance to children with special needs under adoption assistance agreements made by this Commonwealth. All other children entitled to medical assistance pursuant to adoption assistance agreements entered into by this Commonwealth shall be eligible to receive it in accordance with the laws and procedures applicable thereto.

1988, c. 154, § 63.1-238.10; 2002, c. 747.

**§ 63.2-1405. Federal participation**

Consistent with federal law, the Department and the Department of Medical Assistance Services, in connection with the administration of this chapter and any compact pursuant hereto, shall include in any state plan made pursuant to the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272), Titles IV-E and XIX of the Social Security Act, as amended, and any other applicable federal laws, the provision of adoption assistance and medical assistance for which the federal government pays some or all of the costs. The Departments shall apply for and administer all relevant federal aid in accordance with law.

1988, c. 154, § 63.1-238.11; 2002, c. 747.

## Chapter 15 - CHILD ABUSE AND NEGLECT

## Article 1 - GENERAL PROVISIONS

**§ 63.2-1500. Policy of the Commonwealth [Not set out]**

(Acts 2002, c. 747.)

**§ 63.2-1501. Definitions**

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

"Court" means the juvenile and domestic relations district court of the county or city.

"Prevention" means efforts that (i) promote health and competence in people and (ii) create, promote and strengthen environments that nurture people in their development.

1975, c. 341, § 63.1-248.2; 1981, c. 123; 1986, c. 308; 1990, c. 760; 1995, c. 520; 2000, c. 500; 2002, c. 747.

**§ 63.2-1502. Establishment of Child-Protective Services Unit; duties**

There is created a Child-Protective Services Unit in the Department that shall have the following powers and duties:

1. To evaluate and strengthen all local, regional and state programs dealing with child abuse and neglect.

2. To assume primary responsibility for directing the planning and funding of child-protective services. This shall include reviewing and approving the annual proposed plans and budgets for protective services submitted by the local departments.

3. To assist in developing programs aimed at discovering and preventing the many factors causing child abuse and neglect.

4. To prepare and disseminate, including the presentation of, educational programs and materials on child abuse and neglect.

5. To provide educational programs for professionals required by law to make reports under this chapter.

6. To establish standards of training and provide educational programs to qualify workers in the field of child-protective services. Such standards of training shall include provisions regarding the legal duties of the workers in order to protect the constitutional and statutory rights and safety of children and families from the initial time of contact during investigation through treatment.

7. To establish standards of training and educational programs to qualify workers to determine whether complaints of abuse or neglect of a child in a private or state-operated hospital, institution or other facility, or public school, are founded.

8. To maintain staff qualified pursuant to Board regulations to assist local department personnel in determining whether an employee of a private or state-operated hospital, institution or other facility or an employee of a school board, abused or neglected a child in such hospital, institution, or other facility, or public school.

9. To monitor the processing and determination of cases where an employee of 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.

10. To help coordinate child-protective services at the state, regional, and local levels with the efforts of other state and voluntary social, medical and legal agencies.

11. To maintain a child abuse and neglect information system that includes all cases of child abuse and neglect within the Commonwealth.

12. To provide for methods to preserve the confidentiality of all records in order to protect the rights of the child, and his parents or guardians.

13. To establish minimum training requirements for workers and supervisors on family abuse and domestic violence, including the relationship between domestic violence and child abuse and neglect.

14. To establish minimum training requirements for workers and supervisors on identifying, assessing, and providing comprehensive services for children who are victims 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., including efforts to coordinate with law-enforcement, juvenile justice, and social service agencies such as runaway and homeless youth shelters to serve this population.

1975, c. 341, § 63.1-248.7; 1984, c. 734; 1993, c. 955; 2000, c. 500; 2002, c. 747; 2004, cc. 93, 233, 972, 980; 2016, c. 631.

**§ 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 a child; (ii) any injury or threatened injury to the child in which a felony or Class 1 misdemeanor is also suspected; (iii) any sexual abuse, suspected sexual abuse or other sexual offense involving a child, including but not limited to the use or display of the child in sexually explicit visual material, as defined in § 18.2-374.1; (iv) any abduction of a child; (v) any felony or Class 1 misdemeanor

drug offense involving a child; or (vi) contributing to the delinquency of a minor in violation of § 18.2-371, immediately, but in no case more than two hours of receipt of the complaint, and shall provide the attorney for the Commonwealth and the local law-enforcement agency with records and information of the local department, including records related to any complaints of abuse or neglect involving the victim or the alleged perpetrator, related to the investigation of the complaint. The local department shall not allow reports of the death of the victim from other local agencies to substitute for direct reports to the attorney for the Commonwealth and the local law-enforcement agency. The local department shall develop, when practicable, memoranda of understanding for responding to reports of child abuse and neglect with local law enforcement and the attorney for the Commonwealth.

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

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

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

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

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

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

J. The local department shall foster, when practicable, the creation, maintenance and coordination of 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 founded complaints or family assessments and may transmit other information regarding reports, complaints, family assessments and investigations involving active duty military personnel 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 notify the Superintendent of Public Instruction 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 after all rights to any appeal provided by § 63.2-1526 have been exhausted. 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.

1975, c. 341, § 63.1-248.6; 1978, c. 747; 1979, cc. 347, 348; 1984, c. 392; 1987, c. 443; 1989, cc. 109, 547; 1991, c. 644; 1992, cc. 214, 837, 880; 1993, cc. 506, 955; 1994, cc. 643, 675, 840; 1996, cc. 858, 863; 1998, cc. 704, 716; 2000, cc. 500, 854; 2002, c. 747; 2004, cc. 114, 220, 886; 2008, cc. 474, 827; 2009, cc. 813, 840; 2014, cc. 300, 565.

**§ 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.

2000, c. 500, § 63.1-248.2:1; 2002, c. 747.

**§ 63.2-1505. Investigations by local departments**

A. An investigation 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 neglect;

3. Risk of future harm to the child;

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

5. Whether abuse or neglect has occurred;

6. If abuse or neglect has occurred, who abused or neglected the child; and

7. A finding of either founded or unfounded based on the facts collected during the investigation.

B. If the local department responds to the report or complaint by conducting an investigation, the local department shall:

1. Make immediate investigation and, if the report or complaint was based upon one of the factors specified in subsection B of § 63.2-1509, the local department may file a petition pursuant to § 16.1-241.3;

2. Complete a report and transmit it forthwith to the Department, except that no such report shall be transmitted in cases in which the cause to suspect abuse or neglect is one of the factors specified in subsection B of § 63.2-1509 and the mother sought substance abuse counseling or treatment prior to the child's birth;

3. Consult with the family to arrange for necessary protective and rehabilitative services to be provided to the child and his family;

4. Petition the court for services deemed necessary including, but not limited to, removal of the child or his siblings from their home;

5. Determine within 45 days if a report of abuse or neglect is founded or unfounded and transmit a report to such effect to the Department and to the person who is the subject of the investigation. However, upon written justification by the local department, the time for such determination may be extended not to exceed a total of 60 days or, in the event that the investigation is being

conducted in cooperation with a law-enforcement agency and both parties agree that circumstances so warrant, as stated in the written justification, the time for such determination may be extended not to exceed 90 days. If through the exercise of reasonable diligence the local department is unable to find the child who is the subject of the report, the time the child cannot be found shall not be computed as part of the total time period allowed for the investigation and determination and documentation of such reasonable diligence shall be placed in the record. In cases involving the death of a child or alleged sexual abuse of a child who is the subject of the report, the time during which records necessary for the investigation of the complaint but not created by the local department, including autopsy or medical or forensic records or reports, are not available to the local department due to circumstances beyond the local department's control shall not be computed as part of the total time period allowed for the investigation and determination, and documentation of the circumstances that resulted in the delay shall be placed in the record. In cases in which the subject of the investigation is a full-time, part-time, permanent, or temporary employee of a school division who is suspected of abusing or neglecting a child in the course of his educational employment, the time period for determining whether a report is founded or unfounded and transmitting a report to that effect to the Department and the person who is the subject of the investigation shall be mandatory, and every local department shall make the required determination and report within the specified time period without delay;

6. If a report of abuse or neglect is unfounded, transmit a report to such effect to the complainant and parent or guardian and the person responsible for the care of the child in those cases where such person was suspected of abuse or neglect; and

7. If a report of child abuse and neglect is founded, and the subject of the report is a full-time, part-time, permanent, or temporary employee of a school division located within the Commonwealth, notify the relevant school board of the founded complaint.

Any information exchanged for the purposes of this subsection shall not be considered a violation of § 63.2-102, 63.2-104, or 63.2-105.

C. Each local board may obtain and consider, in accordance with regulations adopted by the Board, statewide criminal history record information from the Central Criminal Records Exchange and results of a search of the child abuse and neglect central registry of any individual who is the subject of a child abuse or neglect investigation conducted under this section when there is evidence of child abuse or neglect and the local board is evaluating the safety of the home and whether removal will protect a child from harm. The local board also may obtain such a criminal records or registry search on all adult household members residing in the home where the individual who is the subject of the investigation resides and the child resides or visits. If a child abuse or neglect petition is filed in connection with such removal, a court may admit such information as evidence. Where the individual who is the subject of such information contests its accuracy through testimony under oath in hearing before the court, no court shall receive or consider the contested crim-

inal history record information without certified copies of conviction. Further dissemination of the information provided to the local board is prohibited, except as authorized by law.

D. A person who has not previously participated in the investigation of complaints of child abuse or neglect in accordance with this chapter shall not participate in the investigation of any case involving a complaint of alleged sexual abuse of a child unless he (i) has completed a Board-approved training program for the investigation of complaints involving alleged sexual abuse of a child or (ii) is under the direct supervision of a person who has completed a Board-approved training program for the investigation of complaints involving alleged sexual abuse of a child. No individual may make a determination of whether a case involving a complaint of alleged sexual abuse of a child is founded or unfounded unless he has completed a Board-approved training program for the investigation of complaints involving alleged sexual abuse of a child.

2000, c. 500, § 63.1-248.6:01; 2002, c. 747; 2007, c. 495; 2008, c. 555; 2013, cc. 340, 506; 2014, cc. 299, 504; 2015, c. 524.

**§ 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 neglect;

3. Risk of future harm to the child; and

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

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

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

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

3. Complete the family assessment within forty-five days and transmit a report to such effect to the Department and to the person who is the subject of the family assessment. However, upon written justification by the local department, the family assessment may be extended, not to exceed a total of sixty days;

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

5. Petition the court for services deemed necessary;

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

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

C. When a local department has been designated as a child-protective services differential response agency by the Department, the local department may investigate any report of child abuse or neglect, but the following valid reports of child abuse or neglect shall be investigated: (i) sexual abuse, (ii) child fatality, (iii) abuse or neglect resulting in serious injury as defined in § 18.2-371.1, (iv) child has been taken into the custody of the local department, or (v) cases involving a caretaker at a state-licensed child day center, religiously exempt child day center, licensed, registered or approved family day home, private or public school, hospital or any institution.

2000, c. 500, § 63.1-248.6:02; 2002, cc. 641, 642, 747.

**§ 63.2-1507. Cooperation by state entities**

All law-enforcement departments and other state and local departments, agencies, authorities and institutions shall cooperate with each child-protective services coordinator of a local department and any multi-discipline teams in the detection and prevention of child abuse.

1975, c. 341, § 63.1-248.17; 2002, c. 747.

## Article 2 - COMPLAINTS

**§ 63.2-1508. Valid report or complaint**

A valid report or complaint means the local department has evaluated the information and allegations of the report or complaint and determined that the local department shall conduct an investigation or family assessment because the following elements are present:

1. The alleged victim child or children are under the age of eighteen at the time of the complaint or report;

2. The alleged abuser is the alleged victim child's parent or other caretaker;

3. The local department receiving the complaint or report has jurisdiction; and

4. The circumstances described allege suspected child abuse or neglect.

Nothing in this section shall relieve any person specified in § 63.2-1509 from making a report required by that section, regardless of the identity of the person suspected to have caused such abuse or neglect.

1975, c. 341, § 63.1-248.2; 1981, c. 123; 1986, c. 308; 1990, c. 760; 1995, c. 520; 2000, c. 500; 2002, c. 747.

**§ 63.2-1509. Requirement that certain injuries to children be reported by physicians, nurses, teachers, etc.; penalty for failure to report**

A. The following persons who, in their professional or official capacity, have reason to suspect that a child is an abused or neglected child, shall report the matter immediately to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred or to the Department's toll-free child abuse and neglect hotline:

1. Any person licensed to practice medicine or any of the healing arts;

2. Any hospital resident or intern, and any person employed in the nursing profession;

3. Any person employed as a social worker or family-services specialist;

4. Any probation officer;

5. Any teacher or other person employed in a public or private school, kindergarten or nursery school;

6. Any person providing full-time or part-time child care for pay on a regularly planned basis;

7. Any mental health professional;

8. Any law-enforcement officer or animal control officer;

9. Any mediator eligible to receive court referrals pursuant to § 8.01-576.8;

10. Any professional staff person, not previously enumerated, employed by a private or state-operated hospital, institution or facility to which children have been committed or where children have been placed for care and treatment;

11. Any person 18 years of age or older associated with or employed by any public or private organization responsible for the care, custody or control of children;

12. Any person who is designated a court-appointed special advocate pursuant to Article 5 (§ 9.1-151 et seq.) of Chapter 1 of Title 9.1;

13. Any person 18 years of age or older who has received training approved by the Department of Social Services for the purposes of recognizing and reporting child abuse and neglect;

14. Any person employed by a local department as defined in § 63.2-100 who determines eligibility for public assistance;

15. Any emergency medical services provider certified by the Board of Health pursuant to § 32.1-111.5, unless such provider immediately reports the matter directly to the attending physician at the hospital to which the child is transported, who shall make such report forthwith;

16. Any athletic coach, director or other person 18 years of age or older employed by or volunteering with a private sports organization or team;

17. Administrators or employees 18 years of age or older of public or private day camps, youth centers and youth recreation programs; and

18. Any person employed by a public or private institution of higher education other than an attorney who is employed by a public or private institution of higher education as it relates to information gained in the course of providing legal representation to a client.

This subsection shall not apply to any regular minister, priest, rabbi, imam, or duly accredited practitioner of any religious organization or denomination usually referred to as a church as it relates to (i) information required by the doctrine of the religious organization or denomination to be kept in a confidential manner or (ii) information that would be subject to § 8.01-400 or 19.2-271.3 if offered as evidence in court.

If neither the locality in which the child resides nor where the abuse or neglect is believed to have occurred is known, then such report shall be made to the local department of the county or city where the abuse or neglect was discovered or to the Department's toll-free child abuse and neglect hotline.

If an employee of the local department is suspected of abusing or neglecting a child, the report shall be made to the court of the county or city where the abuse or neglect was discovered. Upon receipt of such a report by the court, the judge shall assign the report to a local department that is not the employer of the suspected employee for investigation or family assessment. The judge may consult with the Department in selecting a local department to respond to the report or the complaint.

If the information is received by a teacher, staff member, resident, intern or nurse in the course of professional services in a hospital, school or similar institution, such person may, in place of said report, immediately notify the person in charge of the institution or department, or his designee, who shall make such report forthwith. If the initial report of suspected abuse or neglect is made to the person in charge of the institution or department, or his designee, pursuant to this subsection, such person shall notify the teacher, staff member, resident, intern or nurse who made the initial report when the report of suspected child abuse or neglect is made to the local department or to the Department's toll-free child abuse and neglect hotline, and of the name of the individual receiving the report, and shall forward any communication resulting from the report, including any information about any actions taken regarding the report, to the person who made the initial report.

The initial report may be an oral report but such report shall be reduced to writing by the child abuse coordinator of the local department on a form prescribed by the Board. Any person required to make the report pursuant to this subsection shall disclose all information that is the basis for his suspicion of abuse or neglect of the child and, upon request, shall make available to the child-protective services coordinator and the local department, which is the agency of jurisdiction, any information, records, or reports that document the basis for the report. All persons required by this subsection to report suspected abuse or neglect who maintain a record of a child who is the subject of such a report shall cooperate with the investigating agency and shall make related information, records and reports available to the investigating agency unless such disclosure violates the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g). Provision of such information, records, and reports by a health care provider shall not be prohibited by § 8.01-399. Criminal investigative reports received from law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be subject to public disclosure.

B. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall include (i) a finding made by a health care provider within six weeks of the birth of a child that the results of toxicology studies of the child indicate the presence of a controlled substance not prescribed for the mother by a physician; (ii) a finding made by a health care provider within six weeks of the birth of a child that the child was born dependent on a controlled substance which was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms; (iii) a diagnosis made by a health care provider at any time following a child's birth that the child has an illness, disease or condition which, to a reasonable degree of medical certainty, is attributable to in utero exposure to a controlled substance which was not prescribed by a physician for the mother or the child; or (iv) a diagnosis made by a health care provider at any time following a child's birth that the child has a fetal alcohol spectrum disorder attributable to in utero exposure to alcohol. When "reason to suspect" is based upon this subsection, such fact shall be included in the report along with the facts relied upon by the person making the report.

C. Any person who makes a report or provides records or information pursuant to subsection A or who testifies in any judicial proceeding arising from such report, records, or information shall be immune from any civil or criminal liability or administrative penalty or sanction on account of such report, records, information, or testimony, unless such person acted in bad faith or with malicious purpose.

D. Any person required to file a report pursuant to this section who fails to do so as soon as possible, but not longer than 24 hours after having reason to suspect a reportable offense of child abuse or neglect, shall be fined not more than $500 for the first failure and for any subsequent failures not less than $1,000. In cases evidencing acts of rape, sodomy, or object sexual penetration as defined in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, a person who knowingly and intentionally fails to make the report required pursuant to this section shall be guilty of a Class 1 misdemeanor.

E. No person shall be required to make a report pursuant to this section if the person has actual knowledge that the same matter has already been reported to the local department or the Department's toll-free child abuse and neglect hotline.

1975, c. 341, § 63.1-248.3; 1976, c. 348; 1978, c. 747; 1993, c. 443; 1994, c. 840; 1995, c. 810; 1998, cc. 704, 716; 1999, c. 606; 2000, c. 500; 2001, c. 853; 2002, cc. 747, 860; 2006, cc. 530, 801; 2008, cc. 43, 268; 2012, cc. 391, 504, 640, 698, 728, 740, 815; 2013, cc. 72, 331; 2014, c. 285.

**§ 63.2-1510. Complaints by others of certain injuries to children**

Any person who suspects that a child is an abused or neglected child may make a complaint concerning such child, except as hereinafter provided, to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred or to the Department's toll-free child abuse and neglect hotline. If an employee of the local department is suspected of abusing or neglecting a child, the complaint shall be made to the court of the county or city where the abuse or neglect was discovered. Upon receipt of such a report by the court, the judge shall assign the report to a local department that is not the employer of the suspected employee for investigation or family assessment; or, if the judge believes that no local department in a reasonable geographic distance can be impartial in responding to the reported case, the judge shall assign the report to the court service unit of his court for evaluation. The judge may consult with the Department in selecting a local department to respond to the report or complaint. Such a complaint may be oral or in writing and shall disclose all information which is the basis for the suspicion of abuse or neglect of the child.

1975, c. 341, § 63.1-248.4; 1976, c. 348; 1994, c. 840; 2000, c. 500; 2002, c. 747.

**§ 63.2-1511. Complaints of abuse and neglect against school personnel; interagency agreement**

A. If a teacher, principal or other person employed by a local school board or employed in a school operated by the Commonwealth is suspected of abusing or neglecting a child in the course of his educational employment, the complaint shall be investigated in accordance with §§ 63.2-1503, 63.2-1505 and 63.2-1516.1. Pursuant to § 22.1-279.1, no teacher, principal or other person employed by a school board or employed in a school operated by the Commonwealth shall subject a student to corporal punishment. However, this prohibition of corporal punishment shall not be deemed to prevent (i) the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) the use of reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) the use of reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) the use of reasonable and necessary force for self-defense or the defense of others; or (v) the use of reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or paraphernalia that are upon the person of the student or within his control. In determining whether the actions of a

teacher, principal or other person employed by a school board or employed in a school operated by the Commonwealth are within the exceptions provided in this section, the local department shall examine whether the actions at the time of the event that were made by such person were reasonable.

B. For purposes of this section, "corporal punishment," "abuse," or "neglect" shall not include physical pain, injury or discomfort caused by the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control as permitted in clause (i) of subsection A or the use of reasonable and necessary force as permitted by clauses (ii), (iii), (iv), and (v) of subsection A, or by participation in practice or competition in an interscholastic sport, or participation in physical education or an extracurricular activity.

C. If, after an investigation of a complaint under this section, the local department determines that the actions or omissions of a teacher, principal, or other person employed by a local school board or employed in a school operated by the Commonwealth were within such employee's scope of employment and were taken in good faith in the course of supervision, care, or discipline of students, then the standard in determining if a report of abuse or neglect is founded is whether such acts or omissions constituted gross negligence or willful misconduct.

D. Each local department and local school division shall adopt a written interagency agreement as a protocol for investigating child abuse and neglect reports. The interagency agreement shall be based on recommended procedures for conducting investigations developed by the Departments of Education and Social Services.

2001, c. 588, § 63.1-248.4:1; 2002, c. 747; 2003, cc. 986, 1013; 2005, cc. 767, 806; 2014, c. 412.

**§ 63.2-1512. Immunity of person making report, etc., from liability**

Any person making a report pursuant to § 63.2-1509, a complaint pursuant to § 63.2-1510, or who takes a child into custody pursuant to § 63.2-1517, or who participates in a judicial proceeding resulting therefrom shall be immune from any civil or criminal liability in connection therewith, unless it is proven that such person acted in bad faith or with malicious intent.

1975, c. 341, § 63.1-248.5; 1988, c. 686; 2002, c. 747.

**§ 63.2-1513. Knowingly making false reports; penalties**

A. Any person fourteen years of age or older who makes or causes to be made a report of child abuse or neglect pursuant to this chapter that he knows to be false shall be guilty of a Class 1 misdemeanor. Any person fourteen years of age or older who has been previously convicted under this subsection and who is subsequently convicted under this subsection shall be guilty of a Class 6 felony.

B. The child-protective services records regarding the person who was alleged to have committed abuse or neglect that result from a report for which a conviction is obtained under this section shall be purged immediately by any custodian of such records upon presentation to the custodian

of a certified copy of such conviction. After purging the records, the custodian shall notify the person in writing that such records have been purged.

1996, cc. 813, 836, § 63.1-248.5:1.01; 1999, c. 828; 2002, c. 747.

## Article 3 - RECORDS

### § 63.2-1514. Retention of records in all reports; procedures regarding unfounded reports alleged to be made in bad faith or with malicious intent

A. The local department shall retain the records of all reports or complaints made pursuant to this chapter, in accordance with regulations adopted by the Board. However, all records related to founded cases of child sexual abuse involving injuries or conditions, real or threatened, that result in or were likely to have resulted in serious harm to a child shall be maintained by the local department for a period of 25 years from the date of the complaint.

B. The Department shall maintain a child abuse and neglect information system that includes a central registry of founded complaints, pursuant to § 63.2-1515. The Department shall maintain all (i) unfounded investigations, (ii) family assessments, and (iii) reports or complaints determined to be not valid in a record which is separate from the central registry and accessible only to the Department and to local departments for child-protective services. The purpose of retaining these complaints or reports is to provide local departments with information regarding prior complaints or reports. In no event shall the mere existence of a prior complaint or report be used to determine that a subsequent complaint or report is founded. The subject of the complaint or report is the person who is alleged to have committed abuse or neglect. The subject of the complaint or report shall have access to his own record. The record of unfounded investigations and complaints and reports determined to be not valid shall be purged one year after the date of the complaint or report if there are no subsequent complaints or reports regarding the same child or the person who is the subject of the complaint or report in that one year. The local department shall retain such records for an additional period of up to two years if requested in writing by the person who is the subject of such complaint or report. The record of family assessments shall be purged three years after the date of the complaint or report if there are no subsequent complaints or reports regarding the same child or the person who is the subject of the report in that three-year period. The child-protective services records regarding the petitioner which result from such complaint or report shall be purged immediately by any custodian of such records upon presentation to the custodian of a certified copy of a court order that there has been a civil action that determined that the complaint or report was made in bad faith or with malicious intent. After purging the records, the custodian shall notify the petitioner in writing that the records have been purged.

C. At the time the local department notifies a person who is the subject of a complaint or report made pursuant to this chapter that such complaint or report is either an unfounded investigation or a completed family assessment, it shall notify him how long the record will be retained and of the availability of the procedures set out in this section regarding reports or complaints alleged to

be made in bad faith or with malicious intent. Upon request, the local department shall advise the person who was the subject of an unfounded investigation if the complaint or report was made anonymously. However, the identity of a complainant or reporter shall not be disclosed.

D. Any person who is the subject of an unfounded report or complaint made pursuant to this chapter who believes that such report or complaint was made in bad faith or with malicious intent may petition the circuit court in the jurisdiction in which the report or complaint was made for the release to such person of the records of the investigation or family assessment. Such petition shall specifically set forth the reasons such person believes that such report or complaint was made in bad faith or with malicious intent. Upon the filing of such petition, the circuit court shall request and the local department shall provide to the circuit court its records of the investigation or family assessment for the circuit court's in camera review. The petitioner shall be entitled to present evidence to support his petition. If the circuit court determines that there is a reasonable question of fact as to whether the report or complaint was made in bad faith or with malicious intent and that disclosure of the identity of the complainant would not be likely to endanger the life or safety of the complainant, it shall provide to the petitioner a copy of the records of the investigation or family assessment. The original records shall be subject to discovery in any subsequent civil action regarding the making of a complaint or report in bad faith or with malicious intent.

1988, c. 686, § 63.1-248.5:1; 1996, cc. 780, 791; 2000, c. 500; 2002, c. 747; 2003, c. 634; 2005, c. 77; 2010, c. 334.

**§ 63.2-1515. Central registry; disclosure of information**

The central registry shall contain such information as shall be prescribed by Board regulation; however, when the founded case of abuse or neglect does not name the parents or guardians of the child as the abuser or neglector, and the abuse or neglect occurred in a licensed or unlicensed child day center, a licensed, registered or approved family day home, a private or public school, or a children's residential facility, the child's name shall not be entered on the registry without consultation with and permission of the parents or guardians. If a child's name currently appears on the registry without consultation with and permission of the parents or guardians for a founded case of abuse and neglect that does not name the parents or guardians of the child as the abuser or neglector, such parents or guardians may have the child's name removed by written request to the Department. The information contained in the central registry shall not be open to inspection by the public. However, appropriate disclosure may be made in accordance with Board regulations.

The Department shall respond to requests for a search of the central registry made by (i) local departments, (ii) local school boards, and (iii) governing boards or administrators of private schools accredited pursuant to § 22.1-19 regarding applicants for employment, pursuant to § 22.1-296.4, in cases where there is no match within the central registry within 10 business days of receipt of such requests. In cases where there is a match within the central registry regarding applicants for employment, the Department shall respond to requests made by local departments,

local school boards, and governing boards or administrators within 30 business days of receipt of such requests. The response may be by first-class mail or facsimile transmission.

Any central registry check of a person who has applied to be a volunteer with a (a) Virginia affiliate of Big Brothers/Big Sisters of America, (b) Virginia affiliate of Compeer, (c) Virginia affiliate of ChildhelpUSA, (d) volunteer fire company or volunteer emergency medical services agency, or (e) court-appointed special advocate program pursuant to § 9.1-153 shall be conducted at no charge.

1975, c. 341, § 63.1-248.8; 1993, cc. 48, 348, 955; 1994, cc. 700, 830; 2000, cc. 95, 734, 805; 2001, c. 321; 2002, cc. 371, 747; 2004, c. 74; 2015, cc. 502, 503; 2016, c. 454.

## Article 4 - PROCEDURES

### § 63.2-1516. Tape recording child abuse investigations

Any person who is suspected of abuse or neglect of a child and who is the subject of an investigation or family assessment pursuant to this chapter may tape record any communications between him and child-protective services personnel that take place during the course of such investigation or family assessment, provided all parties to the conversation are aware the conversation is to be recorded. The parties' knowledge of the recording shall be demonstrated by a declaration at the beginning of the recorded portion of the conversation that the recording is to be made. If a person who is suspected of abuse or neglect of a child and who is the subject of an investigation or family assessment pursuant to this chapter elects to make a tape recording as provided in this section, the child-protective services personnel may also make such a recording.

1990, c. 867, § 63.1-248.6:2; 2000, c. 500; 2002, c. 747.

### § 63.2-1516.01. Investigation procedures involving person who is the subject of complaint

The local department shall, at the initial time of contact with the person subject to a child abuse and neglect investigation, advise such person of the complaints or allegations made against the person, in a manner that is consistent with laws protecting the rights of the person making the report or complaint. In cases where a child is alleged to have been abused or neglected by a teacher, principal or other person employed by a local school board or employed in a school operated by the Commonwealth, in the course of such employment in a nonresidential setting, the provisions of § 63.2-1516.1 shall also apply.

2004, cc. 93, 233.

### § 63.2-1516.1. Investigation procedures when school employee is subject of the complaint or report; release of information in joint investigations

A. Except as provided in subsection B of this section, in cases where a child is alleged to have been abused or neglected by a teacher, principal or other person employed by a local school board or employed in a school operated by the Commonwealth, in the course of such employment in a nonresidential setting, the local department conducting the investigation shall comply with the following provisions in conducting its investigation:

1. The local department shall conduct a face-to-face interview with the person who is the subject of the complaint or report.

2. At the onset of the initial interview with the alleged abuser or neglector, the local department shall notify him in writing of the general nature of the complaint and the identity of the alleged child victim regarding the purpose of the contacts.

3. The written notification shall include the information that the alleged abuser or neglector has the right to have an attorney or other representative of his choice present during his interviews. However, the failure by a representative of the Department of Social Services to so advise the subject of the complaint shall not cause an otherwise voluntary statement to be inadmissible in a criminal proceeding.

4. Written notification of the findings shall be submitted to the alleged abuser or neglector. The notification shall include a summary of the investigation and an explanation of how the information gathered supports the disposition.

5. The written notification of the findings shall inform the alleged abuser or neglector of his right to appeal.

6. The written notification of the findings shall inform the alleged abuser or neglector of his right to review information about himself in the record with the following exceptions:

a. The identity of the person making the report.

b. Information provided by any law-enforcement official.

c. Information that may endanger the well-being of the child.

d. The identity of a witness or any other person if such release may endanger the life or safety of such witness or person.

B. In all cases in which an alleged act of child abuse or neglect is also being criminally investigated by a law-enforcement agency, and the local department is conducting a joint investigation with a law-enforcement officer in regard to such an alleged act, no information in the possession of the local department from such joint investigation shall be released by the local department except as authorized by the investigating law-enforcement officer or his supervisor or the local attorney for the Commonwealth.

C. Failure to comply with investigation procedures does not preclude a finding of abuse or neglect if such a finding is warranted by the facts.

2003, cc. 986, 1013.

**§ 63.2-1517. Authority to take child into custody**

A. A physician or child-protective services worker of a local department or law-enforcement official investigating a report or complaint of abuse and neglect may take a child into custody for up to 72 hours without prior approval of parents or guardians provided:

1. The circumstances of the child are such that continuing in his place of residence or in the care or custody of the parent, guardian, custodian or other person responsible for the child's care, presents an imminent danger to the child's life or health to the extent that severe or irremediable injury would be likely to result or if evidence of abuse is perishable or subject to deterioration before a hearing can be held;

2. A court order is not immediately obtainable;

3. The court has set up procedures for placing such children;

4. Following taking the child into custody, the parents or guardians are notified as soon as practicable. Every effort shall be made to provide such notice in person;

5. A report is made to the local department; and

6. The court is notified and the person or agency taking custody of such child obtains, as soon as possible, but in no event later than 72 hours, an emergency removal order pursuant to § 16.1-251; however, if a preliminary removal order is issued after a hearing held in accordance with § 16.1-252 within 72 hours of the removal of the child, an emergency removal order shall not be necessary. Any person or agency petitioning for an emergency removal order after four hours have elapsed following taking custody of the child shall state the reasons therefor pursuant to § 16.1-251.

B. If the 72-hour period for holding a child in custody and for obtaining a preliminary or emergency removal order expires on a Saturday, Sunday, or legal holiday or day on which the court is lawfully closed, the 72 hours shall be extended to the next day that is not a Saturday, Sunday, or legal holiday or day on which the court is lawfully closed.

1975, c. 341, § 63.1-248.9; 1977, c. 559; 1992, c. 688; 1994, c. 643; 1998, c. 760; 2001, c. 837; 2002, c. 747; 2003, c. 508.

**§ 63.2-1518. Authority to talk to child or sibling**

Any person required to make a report or conduct an investigation or family assessment, pursuant to this chapter may talk to any child suspected of being abused or neglected or to any of his siblings without consent of and outside the presence of his parent, guardian, legal custodian, or other person standing in loco parentis, or school personnel.

1975, c. 341, § 63.1-248.10; 1979, c. 453; 1986, c. 308; 2000, c. 500; 2002, c. 747.

**§ 63.2-1519. Physician-patient and husband-wife privileges inapplicable**

In any legal proceeding resulting from the filing of any report or complaint pursuant to this chapter, the physician-patient and husband-wife privileges shall not apply.

1975, c. 341, § 63.1-248.11; 2002, c. 747.

**§ 63.2-1520. Photographs and X-rays of child; use as evidence**

In any case of suspected child abuse, photographs and X-rays of the child may be taken without the consent of the parent or other person responsible for such child as a part of the medical evaluation. Photographs of the child may also be taken without the consent of the parent or other person responsible for such child as a part of the investigation or family assessment of the case by the local department or the court; however, such photographs shall not be used in lieu of medical evaluation. Such photographs and X-rays may be introduced into evidence in any subsequent proceeding.

The court receiving such evidence may impose such restrictions as to the confidentiality of photographs of any minor as it deems appropriate.

1975, c. 341, § 63.1-248.13; 1978, c. 553; 2000, c. 500; 2002, c. 747.

**§ 63.2-1521. Testimony by child using two-way closed-circuit television**

A. In any civil proceeding involving alleged abuse or neglect of a child pursuant to this chapter or pursuant to §§ 16.1-241, 16.1-251, 16.1-252, 16.1-253, 16.1-283 or § 20-107.2, the child's attorney or guardian ad litem or, if the child has been committed to the custody of a local department, the attorney for the local department may apply for an order from the court that the testimony of the alleged victim or of a child witness be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The person seeking such order shall apply for the order at least seven days before the trial date.

B. The provisions of this section shall apply to the following:

1. An alleged victim who was fourteen years of age or under on the date of the alleged offense and is sixteen or under at the time of the trial; and

2. Any child witness who is fourteen years of age or under at the time of the trial.

C. The court may order that the testimony of the child be taken by closed-circuit television as provided in subsections A and B if it finds that the child is unavailable to testify in open court in the presence of the defendant, the jury, the judge, and the public, for any of the following reasons:

1. The child's persistent refusal to testify despite judicial requests to do so;

2. The child's substantial inability to communicate about the offense; or

3. The substantial likelihood, based upon expert opinion testimony, that the child will suffer severe emotional trauma from so testifying.

Any ruling on the child's unavailability under this subsection shall be supported by the court with findings on the record or with written findings in a court not of record.

D. In any proceeding in which closed-circuit television is used to receive testimony, the attorney for the child and the defendant's attorney and, if the child has been committed to the custody of a local board, the attorney for the local board shall be present in the room with the child, and the child shall be subject to direct and cross examination. The only other persons allowed to be

present in the room with the child during his testimony shall be the guardian ad litem, those persons necessary to operate the closed-circuit equipment, and any other person whose presence is determined by the court to be necessary to the welfare and well-being of the child.

E. The child's testimony shall be transmitted by closed-circuit television into the courtroom for the defendant, jury, judge and public to view. The defendant shall be provided with a means of private, contemporaneous communication with his attorney during the testimony.

1988, c. 845, § 63.1-248.13:1; 1999, c. 668; 2002, c. 747.

**§ 63.2-1522. Admission of evidence of sexual acts with children**

A. In any civil proceeding involving alleged abuse or neglect of a child pursuant to this chapter or pursuant to §§ 16.1-241, 16.1-251, 16.1-252, 16.1-253, 16.1-283 or § 20-107.2, an out-of-court statement made by a child the age of twelve or under at the time the statement is offered into evidence, describing any act of a sexual nature performed with or on the child by another, not otherwise admissible by statute or rule, may be admissible in evidence if the requirements of subsection B are met.

B. An out-of-court statement may be admitted into evidence as provided in subsection A if:

1. The child testifies at the proceeding, or testifies by means of a videotaped deposition or closed-circuit television, and at the time of such testimony is subject to cross examination concerning the out-of-court statement or the child is found by the court to be unavailable to testify on any of these grounds:

a. The child's death;

b. The child's absence from the jurisdiction, provided such absence is not for the purpose of preventing the availability of the child to testify;

c. The child's total failure of memory;

d. The child's physical or mental disability;

e. The existence of a privilege involving the child;

f. The child's incompetency, including the child's inability to communicate about the offense because of fear or a similar reason; and

g. The substantial likelihood, based upon expert opinion testimony, that the child would suffer severe emotional trauma from testifying at the proceeding or by means of a videotaped deposition or closed-circuit television.

2. The child's out-of-court statement is shown to possess particularized guarantees of trustworthiness and reliability.

C. A statement may not be admitted under this section unless the proponent of the statement notifies the adverse party of his intention to offer the statement and the substance of the

statement sufficiently in advance of the proceedings to provide the adverse party with a reasonable opportunity to prepare to meet the statement, including the opportunity to subpoena witnesses.

D. In determining whether a statement possesses particularized guarantees of trustworthiness and reliability under subdivision B 2, the court shall consider, but is not limited to, the following factors:

1. The child's personal knowledge of the event;

2. The age and maturity of the child;

3. Certainty that the statement was made, including the credibility of the person testifying about the statement and any apparent motive such person may have to falsify or distort the event including bias, corruption or coercion;

4. Any apparent motive the child may have to falsify or distort the event, including bias, corruption, or coercion;

5. The timing of the child's statement;

6. Whether more than one person heard the statement;

7. Whether the child was suffering pain or distress when making the statement;

8. Whether the child's age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;

9. Whether the statement has internal consistency or coherence, and uses terminology appropriate to the child's age;

10. Whether the statement is spontaneous or directly responsive to questions;

11. Whether the statement is responsive to suggestive or leading questions; and

12. Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement.

E. The court shall support with findings on the record, or with written findings in a court not of record, any rulings pertaining to the child's unavailability and the trustworthiness and reliability of the out-of-court statement.

1988, c. 892, § 63.1-248.13:2; 2002, c. 747.

**§ 63.2-1523. Use of videotaped statements of complaining witnesses as evidence**

A. In any civil proceeding involving alleged abuse or neglect of a child pursuant to this chapter or pursuant to §§ 16.1-241, 16.1-251, 16.1-252, 16.1-253, 16.1-283 or § 20-107.2, a recording of a statement of the alleged victim of the offense, made prior to the proceeding, may be admissible as evidence if the requirements of subsection B are met and the court determines that:

1. The alleged victim is the age of twelve or under at the time the statement is offered into evidence;

2. The recording is both visual and oral, and every person appearing in, and every voice recorded on, the tape is identified;

3. The recording is on videotape or was recorded by other electronic means capable of making an accurate recording;

4. The recording has not been altered;

5. No attorney for any party to the proceeding was present when the statement was made;

6. The person conducting the interview of the alleged victim was authorized to do so by the child-protective services coordinator of the local department;

7. All persons present at the time the statement was taken, including the alleged victim, are present and available to testify or be cross examined at the proceeding when the recording is offered; and

8. The parties or their attorneys were provided with a list of all persons present at the recording and were afforded an opportunity to view the recording at least ten days prior to the scheduled proceedings.

B. A recorded statement may be admitted into evidence as provided in subsection A if:

1. The child testifies at the proceeding, or testifies by means of closed-circuit television, and at the time of such testimony is subject to cross examination concerning the recorded statement or the child is found by the court to be unavailable to testify on any of these grounds:

a. The child's death;

b. The child's absence from the jurisdiction, provided such absence is not for the purpose of preventing the availability of the child to testify;

c. The child's total failure of memory;

d. The child's physical or mental disability;

e. The existence of a privilege involving the child;

f. The child's incompetency, including the child's inability to communicate about the offense because of fear or a similar reason;

g. The substantial likelihood, based upon expert opinion testimony, that the child would suffer severe emotional trauma from testifying at the proceeding or by means of closed-circuit television; and

2. The child's recorded statement is shown to possess particularized guarantees of trustworthiness and reliability.

C. A recorded statement may not be admitted under this section unless the proponent of the statement notifies the adverse party of his intention to offer the statement and the substance of the statement sufficiently in advance of the proceedings to provide the adverse party with a reasonable opportunity to prepare to meet the statement, including the opportunity to subpoena witnesses.

D. In determining whether a recorded statement possesses particularized guarantees of trustworthiness and reliability under subdivision B 2, the court shall consider, but is not limited to, the following factors:

1. The child's personal knowledge of the event;

2. The age and maturity of the child;

3. Any apparent motive the child may have to falsify or distort the event, including bias, corruption, or coercion;

4. The timing of the child's statement;

5. Whether the child was suffering pain or distress when making the statement;

6. Whether the child's age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;

7. Whether the statement has a "ring of verity," has internal consistency or coherence, and uses terminology appropriate to the child's age;

8. Whether the statement is spontaneous or directly responsive to questions;

9. Whether the statement is responsive to suggestive or leading questions; and

10. Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement.

E. The court shall support with findings on the record, or with written findings in a court not of record, any rulings pertaining to the child's unavailability and the trustworthiness and reliability of the recorded statement.

1988, c. 900, § 63.1-248.13:3; 2002, c. 747.

**§ 63.2-1524. Court may order certain examinations**

The court may order psychological, psychiatric and physical examinations of the child alleged to be abused or neglected and of the parents, guardians, caretakers or siblings of a child suspected of being neglected or abused.

1975, c. 341, § 63.1-248.14; 1976, c. 186; 2002, c. 747.

**§ 63.2-1525. Prima facie evidence for removal of child custody**

In the case of a petition in the court for removal of custody of a child alleged to have been abused or neglected, competent evidence by a physician that a child is abused or neglected shall constitute prima facie evidence to support such petition.

1975, c. 341, § 63.1-248.15; 2002, c. 747.

**§ 63.2-1526. Appeals of certain actions of local departments**

A. A person who is suspected of or is found to have committed abuse or neglect may, within thirty days of being notified of that determination, request the local department rendering such determination to amend the determination and the local department's related records. Upon written request, the local department shall provide the appellant all information used in making its determination. Disclosure of the reporter's name or information which may endanger the well-being of a child shall not be released. The identity of a collateral witness or any other person shall not be released if disclosure may endanger his life or safety. Information prohibited from being disclosed by state or federal law or regulation shall not be released. The local department shall hold an informal conference or consultation where such person, who may be represented by counsel, shall be entitled to informally present testimony of witnesses, documents, factual data, arguments or other submissions of proof to the local department. With the exception of the local director, no person whose regular duties include substantial involvement with child abuse and neglect cases shall preside over the informal conference. If the local department refuses the request for amendment or fails to act within forty-five days after receiving such request, the person may, within thirty days thereafter, petition the Commissioner, who shall grant a hearing to determine whether it appears, by a preponderance of the evidence, that the determination or record contains information which is irrelevant or inaccurate regarding the commission of abuse or neglect by the person who is the subject of the determination or record and therefore shall be amended. A person who is the subject of a report who requests an amendment to the record, as provided above, has the right to obtain an extension for an additional specified period of up to sixty days by requesting in writing that the forty-five days in which the local department must act be extended. The extension period, which may be up to sixty days, shall begin at the end of the forty-five days in which the local department must act. When there is an extension period, the thirty-day period to request an administrative hearing shall begin on the termination of the extension period.

B. The Commissioner shall designate and authorize one or more members of his staff to conduct such hearings. The decision of any staff member so designated and authorized shall have the same force and effect as if the Commissioner had made the decision. The hearing officer shall have the authority to issue subpoenas for the production of documents and the appearance of witnesses. The hearing officer is authorized to determine the number of depositions that will be allowed and to administer oaths or affirmations to all parties and witnesses who plan to testify at the hearing. The Board shall adopt regulations necessary for the conduct of such hearings. Such regulations shall include provisions stating that the person who is the subject of the report has the right (i) to submit oral or written testimony or documents in support of himself and (ii) to be informed of the

procedure by which information will be made available or withheld from him. In case of any information withheld, such person shall be advised of the general nature of such information and the reasons, for reasons of privacy or otherwise, that it is being withheld. Upon giving reasonable notice, either party at his own expense may depose a nonparty and submit such deposition at the hearing pursuant to Board regulation. Upon good cause shown, after a party's written motion, the hearing officer may issue subpoenas for the production of documents or to compel the attendance of witnesses at the hearing, except that alleged child victims of the person and their siblings shall not be subpoenaed, deposed or required to testify. The person who is the subject of the report may be represented by counsel at the hearing. Upon petition, the court shall have the power to enforce any subpoena that is not complied with or to review any refusal to issue a subpoena. Such decisions may not be further appealed except as part of a final decision that is subject to judicial review. Such hearing officers are empowered to order the amendment of such determination or records as is required to make them accurate and consistent with the requirements of this chapter or the regulations adopted hereunder. If, after hearing the facts of the case, the hearing officer determines that the person who is the subject of the report has presented information that was not available to the local department at the time of the local conference and which if available may have resulted in a different determination by the local department, he may remand the case to the local department for reconsideration. The local department shall have fourteen days in which to reconsider the case. If, at the expiration of fourteen days, the local department fails to act or fails to amend the record to the satisfaction of the appellant, the case shall be returned to the hearing officer for a determination. If aggrieved by the decision of the hearing officer, such person may obtain further review of the decision in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq.).

C. Whenever an appeal of the local department's finding is made and a criminal charge is also filed against the appellant for the same conduct involving the same victim as investigated by the local department, the appeal process shall automatically be stayed until the criminal prosecution in circuit court is completed. During such stay, the appellant's right of access to the records of the local department regarding the matter being appealed shall also be stayed. Once the criminal prosecution in circuit court has been completed, the local department shall advise the appellant in writing of his right to resume his appeal within the time frames provided by law and regulation.

1988, c. 407, § 63.1-248.6:1; 1993, cc. 188, 955, 963; 1995, c. 7; 2002, c. 747.

## Article 5 - OVERSIGHT AND EVALUATION OF PROGRAM

### § 63.2-1527. Board oversight duties; Out-of-Family Investigations Advisory Committee

A. The Board shall be responsible for establishing standards for out-of-family investigations and for the implementation of the family assessment track of the differential response system.

B. The Out-of-Family Investigations Advisory Committee (the Committee) is hereby established as an advisory committee in the executive branch of state government.

C. The Committee shall consist of 15 members as follows: one representative of public school employees, one representative of a hospital for children, one representative of a licensed child care center, one representative of a juvenile detention home, one representative of a public or private residential facility for children, one representative of a family day care home, one representative of a local department of Social Services, one representative of a religious organization with a program for children, one representative of Virginians for Child Abuse Prevention and six citizens of the Commonwealth at large. The Chairman of the Board shall appoint such persons for terms established by the Board.

D. The Committee shall advise the Board on the effectiveness of the policies and standards governing out-of-family investigations.

E. The Committee shall elect a chairman and vice-chairman from among its membership. A majority of the members shall constitute a quorum. The meetings of the Committee shall be held at the call of the chairman or whenever the majority of the voting members so request.

F. Members shall receive no compensation for their services nor be reimbursed for expenses incurred in the discharge of their duties as provided in §§ 2.2-2813 and 2.2-2825.

G. The Department of Social Services shall provide staff support to the Committee. All agencies of the Commonwealth shall provide assistance to the Committee, upon request.

1993, c. 955, § 63.1-248.7:1; 2000, c. 500; 2002, c. 747; 2004, c. 103.

**§ 63.2-1528. Repealed**
Repealed by Acts 2012, cc. 803 and 835, cl. 73.

**§ 63.2-1529. Repealed**
Repealed by Acts 2009, c. 32.

## Article 6 - VIRGINIA CHILD PROTECTION ACCOUNTABILITY SYSTEM

**§ 63.2-1530. Virginia Child Protection Accountability System**
A. The Virginia Child Protection Accountability System (the System) is created to collect and make available to the public information on the response to reported cases of child abuse and neglect in the Commonwealth. The Department shall establish and maintain the System. The Board shall promulgate regulations to implement the provisions of this section.

B. The following information shall, notwithstanding any state law regarding privacy or confidentiality of records, be included in the System and made available to the public via a website maintained by the Department and in print format:

1. From the Department: (i) the total number of complaints alleging child abuse, neglect, or a combination thereof received; (ii) the total number of complaints deemed valid pursuant to § 63.2-1508; (iii) the total number of complaints investigated by the Department pursuant to subsection I of §§ 63.2-1503 and 63.2-1505; (iv) the total number of cases determined to be founded cases of

abuse or neglect; and (v) the total number of cases resulting in a finding that the complaint was founded resulting in administrative appeal. Information reported pursuant to clause (v) shall be reported by total number of appeals to the local department, total number of appeals to the Department, and total number of appeals by outcome of the appeal. For each category of information required by this subdivision, the Department shall also report the total number of cases by type of abuse; by gender, age, and race of the alleged victim; and by the nature of the relationship between the alleged victim and alleged abuser.

2. From the Department of State Police, annually, in a format approved by the Department of Social Services, arrest and disposition statistics for violations of §§ 18.2-48, 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-355, 18.2-361, 18.2-366, 18.2-370 through 18.2-370.2, 18.2-371, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-387, and 40.1-103 for inclusion in the Child Protection Accountability System.

3. From every circuit court in the Commonwealth for which data is available through the statewide Case Management System: (i) the total number of (a) misdemeanor convictions appealed from the district court to the circuit court, (b) felony charges certified from the district court to the circuit court, and (c) charges brought by direct indictment in the circuit court that involve a violation of any Code section set forth in subdivision 2; (ii) the total number of cases appealed, certified, or transferred to the court or brought by direct indictment in the circuit court involving a violation of any Code section set forth in subdivision 2 that result in a trial, including the number of bench trials and the number of jury trials; and (iii) the total number of trials involving a violation of any Code section set forth in subdivision 2 resulting in (a) a plea agreement, (b) transfer to another court, (c) a finding of not guilty, (d) conviction on a lesser included offense, or (e) conviction on all charges, by type of trial.

4. From the Virginia Criminal Sentencing Commission, information on sentences imposed for offenses listed in subdivision 2, including (i) the name of the sentencing judge, (ii) the offense or offenses for which a sentence was imposed, (iii) the age of the victim and offender, (iv) the relationship between the victim and the offender, (v) the locality in which the offense occurred, (vi) the sentence imposed and the actual time served, (vii) whether the sentence was an upward or downward departure from the sentencing guidelines or within the sentencing guidelines, and (viii) the reasons given for the departure, if any, from the sentencing guidelines.

5. From the Office of the Executive Secretary of the Supreme Court of Virginia, information by locality on cases from the Juvenile and Domestic Relations District Courts' Case Management System involving (i) children alleged to be abused or neglected, including (a) the number of petitions filed, (b) the number of cases in which an emergency removal order was issued, (c) the number of cases in which a preliminary removal order was issued prior to an adjudicatory hearing, (d) the number of cases in which a preliminary removal order or a preliminary child protective order or both were issued at a preliminary hearing, and (e) the number of cases in which a preliminary child protective order or a child protective order was issued other than at a preliminary hearing;

and (ii) family abuse cases, including (a) the number of family abuse emergency protective orders issued by magistrates and juvenile and domestic relations district courts pursuant to § 16.1-253.4, (b) the number of family abuse protective petitions filed, and (c) the number of family abuse protective orders issued pursuant to § 16.1-279.1.

Information required to be reported pursuant to subdivisions 1 through 5 shall be reported annually in a format approved by the Department of Social Services and aggregated by locality.

C. Data collected pursuant to subsection B shall be made available to the public on a website established and maintained by the Department and shall also be made readily available to the public in print format. Information included in the System shall be presented in such a manner that no individual identifying information shall be included.

2009, c. 445; 2010, cc. 664, 726; 2012, cc. 113, 661.

## Chapter 16 - ADULT SERVICES

## Article 1 - ADULT SERVICES

### § 63.2-1600. Home-based services

Each local board shall provide for the delivery of home-based services that include homemaker, companion, or chore services that will allow individuals to attain or maintain self-care and are likely to prevent or reduce dependency, subject to the supervision and in accordance with regulations of the Commissioner for Aging and Rehabilitative Services as provided in Article 4 (§ 51.5-144 et seq.) of Chapter 14 of Title 51.5. Eligibility for such services shall be determined according to regulations of the Commissioner for Aging and Rehabilitative Services. Such services shall be provided to the extent that federal or state matching funds are made available to each locality.

983, c. 605, § 63.1-55.01; 2002, c. 747; 2012, cc. 803, 835.

### § 63.2-1601. Authority to provide adult foster care services

Each local board is authorized to provide adult foster care services that may include recruitment, approval, and supervision subject to the supervision and in accordance with regulations of the Commissioner for Aging and Rehabilitative Services as provided in Article 4 (§ 51.5-144 et seq.) of Chapter 14 of Title 51.5.

1978, c. 180, § 63.1-55.1:1; 2002, c. 747; 2012, cc. 803, 835.

### § 63.2-1601.1. Criminal history check for agency approved providers of services to adults

A. Each local board shall obtain, in accordance with regulations adopted by the Board, criminal history record information from the Central Criminal Records Exchange of any individual the local board is considering approving as a provider of home-based services pursuant to § 63.2-1600 or adult foster care pursuant to § 63.2-1601. The local board may also obtain such a criminal records search on all adult household members residing in the home of the individual with whom the

adult is to be placed. The local board shall not hire for compensated employment any persons who have been convicted of an offense as defined in § 63.2-1719. If approval as an agency approved provider is denied because of information obtained through a Central Criminal Records Exchange search, the local board, upon request, shall provide a copy of the information obtained to the individual who is the subject of the search. Further dissemination of the criminal history record information is prohibited.

B. In emergency circumstances, each local board may obtain from a criminal justice agency the criminal history record information from the Central Criminal Records Exchange for the criminal records search authorized by this section. The provision of home-based services shall be immediately terminated or the adult shall be removed from the home immediately, if any adult resident has been convicted of a barrier crime as described in § 63.2-1719.

2007, c. 572.

**§ 63.2-1602. Other adult services**

Subject to the supervision and in accordance with regulations of the Commissioner for Aging and Rehabilitative Services as provided in Article 4 (§ 51.5-144 et seq.) of Chapter 14 of Title 51.5, each local board shall:

1. Participate in nursing home pre-admission screenings of all individuals pursuant to § 32.1-330;

2. Provide assisted living facility assessments of residents and applicants pursuant to § 63.2-1804;

3. Participate in long-term care service coordination pursuant to § 51.5-138;

4. Provide social services or public assistance, as appropriate, to individuals discharged from state hospitals or training centers pursuant to §§ 37.2-505 and 37.2-837; and

5. Participate in other programs pursuant to state and federal law.

2002, c. 747; 2005, c. 716; 2012, cc. 476, 507, 803, 835.

**§ 63.2-1602.1. Repealed**

Repealed by Acts 2012, cc. 803 and 835, cl. 61, effective July 1, 2013.

## Article 2 - ADULT PROTECTIVE SERVICES

**§ 63.2-1603. Protection of adults; definitions**

As used in this article:

"Adult" means any person 60 years of age or older, or any person 18 years of age or older who is incapacitated and who resides in the Commonwealth; provided, however, "adult" may include qualifying nonresidents who are temporarily in the Commonwealth and who are in need of temporary or emergency protective services.

"Emergency" means that an adult is living in conditions that present a clear and substantial risk of death or immediate and serious physical harm to himself or others.

"Incapacitated person" means any adult who is impaired by reason of mental illness, intellectual disability, physical illness or disability, advanced age or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate or carry out responsible decisions concerning his or her well-being.

1977, c. 547, § 63.1-55.2; 1978, c. 749; 2002, c. 747; 2004, cc. 749, 1011; 2012, cc. 476, 507.

**§ 63.2-1604. Repealed**

Repealed by Acts 2012, cc. 803 and 835, cl. 61, effective July 1, 2013.

**§ 63.2-1605. Protective services for adults by local departments**

A. Each local board, to the extent that federal or state matching funds are made available to each locality, shall provide, pursuant to regulations and subject to supervision of the Commissioner for Aging and Rehabilitative Services, adult protective services for adults who are found to be abused, neglected or exploited and who meet one of the following criteria: (i) the adult is 60 years of age or older or (ii) the adult is 18 years of age or older and is incapacitated. The requirement to provide such services shall not limit the right of any individual to refuse to accept any of the services so offered, except as provided in § 63.2-1608.

B. Upon receipt of the report pursuant to § 63.2-1606, the local department shall determine the validity of such report and shall initiate an investigation within 24 hours of the time the report is received in the local department. Local departments shall consider valid any report meeting all of the following criteria: (i) the subject of the report is an adult as defined in this article, (ii) the report concerns a specific adult and there is enough information to locate the adult, and (iii) the report describes the circumstances of the alleged abuse, neglect, or exploitation.

C. The local department shall refer any appropriate matter and all relevant documentation to the appropriate licensing, regulatory, or legal authority for administrative action or criminal investigation.

D. If a local department is denied access to an adult for whom there is reason to suspect the need for adult protective services, then the local department may petition the circuit court for an order allowing access or entry or both. Upon a showing of good cause supported by an affidavit or testimony in person, the court may enter an order permitting such access or entry.

E. In any case of suspected adult abuse, neglect, or exploitation, local departments, with the informed consent of the adult or his legal representative, shall take or cause to be taken photographs, video recordings, or appropriate medical imaging of the adult and his environment as long as such measures are relevant to the investigation and do not conflict with § 18.2-386.1. However, if the adult is determined to be incapable of making an informed decision and of giving informed consent and either has no legal representative or the legal representative is the suspected perpetrator of the adult abuse, neglect, or exploitation, consent may be given by an agent appointed under an advance medical directive or medical power of attorney, or by a person author-

ized, pursuant to § 54.1-2986. In the event no agent or authorized representative is immediately available then consent shall be deemed to be given.

F. Local departments shall foster the development, implementation, and coordination of adult protective services to prevent adult abuse, neglect, and exploitation.

G. Local departments shall not investigate allegations of abuse, neglect, or exploitation of adults incarcerated in state correctional facilities.

H. Local departments or the adult protective services hotline, upon receiving the initial report pursuant to § 63.2-1606, shall immediately notify the local law-enforcement agency where the adult resides, or where the alleged abuse, neglect, or exploitation took place, or if these places are unknown, then where the alleged abuse, neglect, or exploitation was discovered, when in receipt of a report describing any of the following:

1. Sexual abuse as defined in § 18.2-67.10;

2. Death, serious bodily injury or disease as defined in § 18.2-369 that is believed to be the result of abuse or neglect; or

3. Any other criminal activity involving abuse or neglect that places the adult in imminent danger of death or serious bodily harm.

I. Upon receipt of an initial report pursuant to § 63.2-1606 or during an adult protective services investigation of suspected financial exploitation of an adult in which financial losses to the adult resulting from the exploitation are suspected to be greater than $50,000, the local department or adult protective services hotline shall immediately refer the matter and all relevant documentation to the local law-enforcement agency where the adult resides or where the alleged exploitation took place or, if these places are not known, where the alleged exploitation was discovered, for investigation.

J. The report and evidence received by the local department and any written findings, evaluations, records, and recommended actions shall be confidential and shall be exempt from disclosure requirements of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that such information may be disclosed to persons having a legitimate interest in the matter in accordance with §§ 63.2-102 and 63.2-104 and pursuant to official interagency agreements or memoranda of understanding between state agencies.

1974, c. 329, § 63.1-55.1; 1977, c. 547; 1978, c. 749; 1983, c. 604; 1999, c. 749; 2002, c. 747; 2004, cc. 749, 1011; 2006, c. 149; 2009, c. 673; 2012, cc. 803, 835; 2016, cc. 223, 408.

**§ 63.2-1606. Protection of aged or incapacitated adults; mandated and voluntary reporting**

A. Matters giving reason to suspect the abuse, neglect or exploitation of adults shall be reported immediately upon the reporting person's determination that there is such reason to suspect. Medical facilities inspectors of the Department of Health are exempt from reporting suspected abuse immediately while conducting federal inspection surveys in accordance with § 1864 of Title XVIII

and Title XIX of the Social Security Act, as amended, of certified nursing facilities as defined in § 32.1-123. Reports shall be made to the local department or the adult protective services hotline in accordance with requirements of this section by the following persons acting in their professional capacity:

1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503, with the exception of persons licensed by the Board of Veterinary Medicine;

2. Any mental health services provider as defined in § 54.1-2400.1;

3. Any emergency medical services provider certified by the Board of Health pursuant to § 32.1-111.5, unless such provider immediately reports the suspected abuse, neglect or exploitation directly to the attending physician at the hospital to which the adult is transported, who shall make such report forthwith;

4. Any guardian or conservator of an adult;

5. Any person employed by or contracted with a public or private agency or facility and working with adults in an administrative, supportive or direct care capacity;

6. Any person providing full, intermittent or occasional care to an adult for compensation, including, but not limited to, companion, chore, homemaker, and personal care workers; and

7. Any law-enforcement officer.

B. The report shall be made in accordance with subsection A to the local department of the county or city wherein the adult resides or wherein the adult abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline. Nothing in this section shall be construed to eliminate or supersede any other obligation to report as required by law. If a person required to report under this section receives information regarding abuse, neglect or exploitation while providing professional services in a hospital, nursing facility or similar institution, then he may, in lieu of reporting, notify the person in charge of the institution or his designee, who shall report such information, in accordance with the institution's policies and procedures for reporting such matters, immediately upon his determination that there is reason to suspect abuse, neglect or exploitation. Any person required to make the report or notification required by this subsection shall do so either orally or in writing and shall disclose all information that is the basis for the suspicion of adult abuse, neglect or exploitation. Upon request, any person required to make the report shall make available to the adult protective services worker and the local department investigating the reported case of adult abuse, neglect or exploitation any information, records or reports which document the basis for the report. All persons required to report suspected adult abuse, neglect or exploitation shall cooperate with the investigating adult protective services worker of a local department and shall make information, records and reports which are relevant to the investigation available to such worker to the extent permitted by state and federal law. Criminal investigative reports received from law-enforcement agencies shall not be further

disseminated by the investigating agency nor shall they be subject to public disclosure; such reports may, however, be disclosed to the Adult Fatality Review Team as provided in § 32.1-283.5 or to a local or regional adult fatality review team as provided in § 32.1-283.6 and, if reviewed by the Team or a local or regional adult fatality review team, shall be subject to applicable confidentiality requirements of the Team or a local or regional adult fatality review team.

C. Any financial institution staff who suspects that an adult has been exploited financially may report such suspected exploitation to the local department of the county or city wherein the adult resides or wherein the exploitation is believed to have occurred or to the adult protective services hotline. For purposes of this section, financial institution staff means any employee of a bank, savings institution, credit union, securities firm, accounting firm, or insurance company.

D. Any person other than those specified in subsection A who suspects that an adult is an abused, neglected or exploited adult may report the matter to the local department of the county or city wherein the adult resides or wherein the abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline.

E. Any person who makes a report or provides records or information pursuant to subsection A, C, or D, or who testifies in any judicial proceeding arising from such report, records or information, or who takes or causes to be taken with the adult's or the adult's legal representative's informed consent photographs, video recordings, or appropriate medical imaging of the adult who is subject of a report shall be immune from any civil or criminal liability on account of such report, records, information, photographs, video recordings, appropriate medical imaging or testimony, unless such person acted in bad faith or with a malicious purpose.

F. An employer of a mandated reporter shall not prohibit a mandated reporter from reporting directly to the local department or to the adult protective services hotline. Employers whose employees are mandated reporters shall notify employees upon hiring of the requirement to report.

G. Any person 14 years of age or older who makes or causes to be made a report of adult abuse, neglect, or exploitation that he knows to be false shall be guilty of a Class 4 misdemeanor. Any subsequent conviction of this provision shall be a Class 2 misdemeanor.

H. Any person who fails to make a required report or notification pursuant to subsection A shall be subject to a civil penalty of not more than $500 for the first failure and not less than $100 nor more than $1,000 for any subsequent failures. Civil penalties under subdivision A 7 shall be determined by a court of competent jurisdiction, in its discretion. All other civil penalties under this section shall be determined by the Commissioner for Aging and Rehabilitative Services or his designee. The Commissioner for Aging and Rehabilitative Services shall establish by regulation a process for imposing and collecting civil penalties, and a process for appeal of the imposition of such penalty pursuant to § 2.2-4026 of the Administrative Process Act.

I. Any mandated reporter who has reasonable cause to suspect that an adult died as a result of abuse or neglect shall immediately report such suspicion to the appropriate medical examiner and

to the appropriate law-enforcement agency, notwithstanding the existence of a death certificate signed by a licensed physician. The medical examiner and the law-enforcement agency shall receive the report and determine if an investigation is warranted. The medical examiner may order an autopsy. If an autopsy is conducted, the medical examiner shall report the findings to law enforcement, as appropriate, and to the local department or to the adult protective services hotline.

J. No person or entity shall be obligated to report any matter if the person or entity has actual knowledge that the same matter has already been reported to the local department or to the adult protective services hotline.

K. All law-enforcement departments and other state and local departments, agencies, authorities and institutions shall cooperate with each adult protective services worker of a local department in the detection, investigation and prevention of adult abuse, neglect and exploitation.

1977, c. 547, § 63.1-55.3; 1984, c. 628; 1986, cc. 448, 487; 1990, c. 308; 1991, c. 33; 1994, c. 891; 1997, c. 687; 1999, c. 749; 2001, c. 191; 2002, c. 747; 2004, cc. 749, 1011; 2008, c. 539; 2009, c. 538; 2012, cc. 803, 835; 2013, cc. 72, 331; 2015, c. 108.

**§ 63.2-1606.1. Photographs, X-rays and medical imaging of incapacitated persons; use as evidence**

In any case of suspected abuse of an incapacitated person, photographs, X-rays and appropriate medical imaging of such incapacitated person may be taken as a part of the medical evaluation without the consent of the person responsible for the incapacitated person. Such images shall not be used in lieu of medical evaluation.

Such photographs, X-rays and medical imaging may be introduced into evidence in any civil or criminal proceeding. The court receiving such evidence may impose such restrictions as to the confidentiality of photographs, X-rays and medical imaging of any incapacitated person as it deems appropriate.

2013, cc. 442, 464.

**§ 63.2-1607. Repealed**

Repealed by Acts 2004, cc. 749 and 1011.

**§ 63.2-1608. Involuntary adult protective services**

A. If an adult lacks the capacity to consent to receive adult protective services, these services may be ordered by a court on an involuntary basis through an emergency order pursuant to § 63.2-1609 or by a guardian or conservator appointed pursuant to Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2.

B. In ordering involuntary adult protective services, the court shall authorize only that intervention which it finds to be least restrictive of the adult's liberty and rights, while consistent with his welfare and safety. The basis for such finding shall be stated in the record by the court.

C. The adult shall not be required to pay for involuntary adult protective services, unless such payment is authorized by the court upon a showing that the person is financially able to pay. In such event the court shall provide for reimbursement of the actual costs incurred by the local department in providing adult protective services, excluding administrative costs.

1977, c. 547, § 63.1-55.5; 1978, c. 562; 1979, c. 451; 1997, c. 801; 2002, c. 747; 2004, cc. 749, 1011.

**§ 63.2-1609. Emergency order for adult protective services**

A. Upon petition by the local department to the circuit court, the court may issue an order authorizing the provision of adult protective services on an emergency basis to an adult after finding on the record, based on a preponderance of the evidence, that:

1. The adult is incapacitated;

2. An emergency exists;

3. The adult lacks the capacity to consent to receive adult protective services; and

4. The proposed order is substantially supported by the findings of the local department that has investigated the case, or if not so supported, there are compelling reasons for ordering services.

B. In issuing an emergency order, the court shall adhere to the following limitations:

1. Only such adult protective services as are necessary to improve or correct the conditions creating the emergency shall be ordered, and the court shall designate the approved services in its order. In ordering adult protective services the court shall consider the right of a person to rely on nonmedical remedial treatment in accordance with a recognized religious method of healing in lieu of medical care.

2. The court shall specifically find in the emergency order whether hospitalization or a change of residence is necessary. Approval of the hospitalization or change of residence shall be stated in the order. No adult may be committed to a mental health facility under this section.

3. Adult protective services may be provided through an appropriate court order only for a period of 15 days. The original order may be renewed once for a five-day period upon a showing to the court that continuation of the original order is necessary to remove the emergency.

4. In its order the court shall appoint the petitioner or another interested person, as temporary guardian of the adult with responsibility for the adult's welfare and authority to give consent for the adult for the approved adult protective services until the expiration of the order.

5. The issuance of an emergency order and the appointment of a temporary guardian shall not deprive the adult of any rights except to the extent provided for in the order or appointment.

C. The petition for an emergency order shall set forth the name, address, and interest of the petitioner; the name, age and address of the adult in need of adult protective services; the nature of the emergency; the nature of the adult's incapacity, if determinable; the proposed adult protective

services; the petitioner's reasonable belief, together with facts supportive thereof, as to the existence of the facts stated in subdivisions A 1 through A 4; and facts showing the petitioner's attempts to obtain the adult's consent to the services and the outcomes of such attempts.

D. Written notice of the time, date and place for the hearing shall be given to the adult, to his spouse, or if none, to his nearest known next of kin, and a copy of the petition shall be attached. Such notice shall be given at least 24 hours prior to the hearing for emergency intervention. The court may waive the 24-hour notice requirement upon showing that (i) immediate and reasonably foreseeable physical harm to the adult or others will result from the 24-hour delay, and (ii) reasonable attempts have been made to notify the adult, his spouse, or if none, his nearest known next of kin.

E. Upon receipt of a petition for an emergency order for adult protective services, the court shall hold a hearing. The adult who is the subject of the petition shall have the right to be present and be represented by counsel at the hearing. If it is determined that the adult is indigent, or, in the determination of the judge, lacks capacity to waive the right to counsel, the court shall locate and appoint a guardian ad litem. If the adult is indigent, the cost of the proceeding shall be borne by the Commonwealth. If the adult is not indigent, the court may order that the cost of the proceeding shall be borne by such adult. This hearing shall be held no earlier than 24 hours after the notice required in subsection D has been given, unless such notice has been waived by the court.

F. The adult, the temporary guardian or any interested person may petition the court to have the emergency order set aside or modified at any time there is evidence that a substantial change in the circumstances of the adult for whom the emergency services were ordered has occurred.

G. Where adult protective services are rendered on the basis of an emergency order, the temporary guardian shall submit to the court a report describing the circumstances thereof including the name, place, date and nature of the services provided. This report shall become part of the court record. Such report shall be confidential and open only to such persons as may be directed by the court.

H. If the person continues to need adult protective services after the renewal order provided in subdivision B 3 has expired, the temporary guardian or the local department shall immediately petition the court to appoint a guardian pursuant to Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2.

1977, c. 547, § 63.1-55.6; 1978, c. 562; 1979, c. 451; 1997, c. 921; 2002, c. 747; 2004, cc. 749, 1011.

**§ 63.2-1610. Voluntary adult protective services**

A. The local department shall provide or arrange for protective services if the adult requests or affirmatively consents to receive these services. If the adult withdraws or refuses consent, the services shall not be provided.

B. No person shall interfere with the provision of adult protective services to an (i) adult who requests or consents to receive such services, or (ii) for whom consent has been lawfully given. In the event that interference occurs on a continuing basis, the director may petition the court of competent jurisdiction to enjoin such interference.

C. The actual costs incurred by the local department in providing adult protective services shall be borne by the local department, unless the adult or his representative agrees to pay for them or a court orders the local department to receive reasonable reimbursement for the adult protective services, excluding administrative costs, from the adult's assets after a finding that the adult is financially able to make such payment.

1977, c. 547, § 63.1-55.7; 2002, c. 747; 2004, cc. 749, 1011.

## Article 3 - DOMESTIC VIOLENCE PREVENTION SERVICES

### § 63.2-1611. Policy of Commonwealth; Department designated agency to coordinate state efforts

The General Assembly declares that it is the policy of this Commonwealth to support the efforts of public and private community groups seeking to provide assistance to and treatment for the victims of domestic violence and to provide recognition to the need to combat all phases of domestic violence in this Commonwealth. To this end the Department is designated as the state agency responsible for coordinating state efforts in this regard.

1980, c. 597, § 63.1-315; 2002, c. 747.

### § 63.2-1612. Responsibilities of Department; domestic violence prevention and services

It shall be the responsibility of the Department, to the extent funds are appropriated by the General Assembly or otherwise made available:

1. To support, strengthen, evaluate, and monitor community-based domestic violence programs funded by the Department and to act as the administrator for state grant funds and the disbursal of federal funds pursuant to §§ 63.2-1614 and 63.2-1615;

2. To collaborate with the Statewide Domestic Violence Coalition in developing and implementing community-based programs to respond to and prevent domestic violence;

3. To prepare, disseminate, and present educational programs and materials on domestic violence to the local departments, community provider agencies, and the general public;

4. To support, strengthen, and act as a resource to local departments on issues of domestic violence, particularly as they relate to both adult and child protective services and self-sufficiency;

5. To establish minimum standards of training and provide educational programs to train workers in the fields of child and adult protective services in local departments and community-based domestic violence programs funded by the Department to identify domestic violence and provide effective referrals for appropriate services;

6. To provide training and educational opportunities on effective collaboration for all staff of local departments and community-based domestic violence programs;

7. To work with the Statewide Domestic Violence Coalition to (a) develop policies and procedures that guide the work of persons providing services to victims of domestic violence and their children; (b) implement methods to preserve the confidentiality of all domestic violence services records pursuant to §§ 63.2-104 and 63.2-104.1 in order to protect the rights and safety of victims of domestic violence; (c) develop policies and implement methods to assure the confidentiality of records pertaining to the address or location of any shelter or facility assisted under the Family Violence Prevention and Services Act, 42 U.S.C. § 10401 et seq.; (d) collect, prepare, and disseminate statistical data on the occurrence of domestic violence and the services provided throughout the Commonwealth; (e) operate the Virginia Family Violence and Sexual Assault 24-hour toll-free hotline and the Statewide Domestic Violence Database (Vadata); and (f) provide a clearinghouse of information and technical assistance on intervention and prevention of domestic violence;

8. To encourage the use of existing information and referral agencies to provide specialized information on domestic violence;

9. To develop and maintain a statewide list of available community and state resources for the victims of domestic violence;

10. To provide technical assistance on establishing shelters, self-help groups and other necessary service delivery programs;

11. To provide leadership and coordination within the Department on domestic violence as it relates to child and adult abuse and neglect, benefits programs, Temporary Assistance to Needy Families, foster care prevention, child support enforcement, child care, and the promotion of healthy family relationships; and

12. To promote collaboration and cooperation with other state agencies, including the Department of Criminal Justice Services, the Department of Health, the Department of Housing and Community Development, the Office of the Attorney General, and the Virginia Employment Commission, for technical assistance, data collection and service delivery to facilitate the appropriate response to victims of domestic violence.

1980, c. 597, § 63.1-317; 2002, c. 747; 2005, cc. 638, 685; 2006, c. 135.

**§ 63.2-1613. Responsibilities of local departments**

Local departments may, to the extent that funds are available:

1. Promote interagency cooperation at the local level for technical assistance, data collection and service delivery; and

2. Provide services directly to victims of domestic violence.

1985, c. 20, § 63.1-317.1; 2002, c. 747.

**§ 63.2-1614. Authority to receive and grant funds**
Subject to regulations of the Board and to the availability of state or federal funds for services to the victims of domestic violence, the Department is authorized to:

1. Receive state and federal funds for services to the victims of domestic violence;

2. Disperse funds through matching grants to local, public or private nonprofit agencies to provide service programs for the victims of domestic violence; and

3. Develop and implement grant mechanisms for funding such local services.

1980, c. 597, § 63.1-318; 2002, c. 747.

**§ 63.2-1615. What functions and services may be funded**
In dispersing funds through grants to local agencies to provide service programs for the victims of domestic violence, the Department may fund both administrative functions and the delivery of direct services, including a portion of: the operational costs of offices and shelters including staff, rent, utilities, travel and supplies; twenty-four-hour crisis intervention hotlines; counseling; information and referral; self-help groups; transportation; emergency shelter; and follow-up services.

1980, c. 597, § 63.1-319; 2002, c. 747.

# Subtitle IV - LICENSURE

## Chapter 17 - LICENSURE AND REGISTRATION PROCEDURES

## Article 1 - GENERAL PROVISIONS

**§ 63.2-1700. Application fees; regulations and schedules; use of fees; certain facilities, centers and agencies exempt**
The Board is authorized to adopt regulations and schedules for fees to be charged for processing applications for licenses to operate assisted living facilities, adult day care centers and child welfare agencies. Such schedules shall specify minimum and maximum fees and, where appropriate, gradations based on the capacity of such facilities, centers and agencies. Fees shall be used for the development and delivery of training for operators and staff of facilities, centers and agencies. Fees shall be expended for this purpose within two fiscal years following the fiscal year in which they are collected. These fees shall not be applicable to facilities, centers or agencies operated by federal entities.

The Board shall develop training programs for operators and staffs of licensed child day programs. Such programs shall include formal and informal training offered by institutions of higher education, state and national associations representing child care professionals, local and regional early childhood educational organizations and licensed child care providers. Training provided to operators and staffs of licensed child day programs shall include training and information regarding shaken baby syndrome, its effects, and resources for help and support for caretakers. To the

maximum extent possible, the Board shall ensure that all provider interests are represented and that no single approach to training shall be given preference.

1983, c. 153, §§ 63.1-174.01, 63.1-196.5; 1988, c. 129; 1991, c. 532; 1992, c. 356, § 63.1-194.3; 1993, cc. 225, 730, 742, 957, 993; 1996, c. 492; 2002, c. 747; 2010, c. 551; 2012, cc. 803, 835.

**§ 63.2-1701. Licenses required; issuance, expiration, and renewal; maximum number of residents, participants or children; posting of licenses**

A. Every person who constitutes, or who operates or maintains, an assisted living facility, adult day care center, or child welfare agency shall obtain the appropriate license from the Commissioner, which may be renewed. However, no license shall be required for an adult day care center that provides services only to individuals enrolled in a Programs of All-Inclusive Care for the Elderly program operated in accordance with an agreement between the provider, the Department of Medical Assistance Services and the Centers for Medicare and Medicaid Services. The Commissioner, upon request, shall consult with, advise, and assist any person interested in securing and maintaining any such license. Each application for a license shall be made to the Commissioner, in such form as he may prescribe. It shall contain the name and address of the applicant and, if the applicant is an association, partnership, limited liability company, or corporation, the names and addresses of its officers and agents. The application shall also contain a description of the activities proposed to be engaged in and the facilities and services to be employed, together with other pertinent information as the Commissioner may require.

B. The licenses shall be issued on forms prescribed by the Commissioner. Any two or more licenses may be issued for concurrent operation of more than one assisted living facility, adult day care center, or child welfare agency, but each license shall be issued upon a separate form. Each license and renewals thereof for an assisted living facility, adult day care center, or child welfare agency may be issued for periods of up to three successive years, unless sooner revoked or surrendered. Licenses issued to child day centers under this chapter shall have a duration of two years from date of issuance.

C. The length of each license or renewal thereof for an assisted living facility shall be based on the judgment of the Commissioner regarding the compliance history of the facility and the extent to which it meets or exceeds state licensing standards. On the basis of this judgment, the Commissioner may issue licenses or renewals thereof for periods of six months, one year, two years, or three years.

D. The Commissioner may extend or shorten the duration of licensure periods for a child welfare agency whenever, in his sole discretion, it is administratively necessary to redistribute the workload for greater efficiency in staff utilization.

E. Each license shall indicate the maximum number of persons who may be cared for in the assisted living facility, adult day care center, or child welfare agency for which it is issued.

F. The license and any other documents required by the Commissioner shall be posted in a conspicuous place on the licensed premises.

G. Every person issued a license that has not been suspended or revoked shall renew such license prior to its expiration.

Code 1950, §§ 63-23.1, 63-233, 63-234; 1954, c. 259; 1968, cc. 578, 585, §§ 63.1-175, 63.1-196, 63.1-197; 1972, c. 540, § 63.1-196.1; 1973, c. 227; 1974 c. 419; 1975 c. 386; 1979, cc. 461, 483; 1981, c. 222; 1983, c. 153; 1985 c. 384; 1987, cc. 693, 698; 1991, c. 532; 1992, cc. 356, 666, § 63.1-194.5; 1993, cc. 730, 742, 957, 993; 1994, c. 686; 1996, c. 747; 1999, cc. 740, 964; 2000, cc. 178, 203; 2002 cc. 380, 747; 2016, c. 22.

**§ 63.2-1701.1. Local government to report business licenses issued to child day centers and family day homes**

The commissioner of the revenue or other local business license official shall report to the Department on a semiannual basis the name, address, and contact information of any child day center or family day home to which a business license was issued.

2015, cc. 758, 770.

**§ 63.2-1702. Investigation on receipt of application**

Upon receipt of the application, the Commissioner shall cause an investigation to be made of the activities, services, and facilities of the applicant and of his character and reputation or, if the applicant is an association, partnership, limited liability company, or corporation, the character and reputation of its officers and agents, and upon receipt of the initial application, an investigation of the applicant's financial responsibility. The financial records of an applicant shall not be subject to inspection if the applicant submits an operating budget and at least one credit reference. In the case of child welfare agencies and assisted living facilities, the character and reputation investigation upon application shall include background checks pursuant to §§ 63.2-1721 and 63.2-1721.1; however, a children's residential facility shall comply with the background check requirements contained in § 63.2-1726. Records that contain confidential proprietary information furnished to the Department pursuant to this section shall be exempt from disclosure pursuant to subdivision 4 of § 2.2-3705.5.

Code 1950, §§ 63-223.2, 63-234, 63-235; 1954, c. 259; 1968, cc. 578, 585, §§ 63.1-176, 63.1-197, 63.1-198; 1972, c. 540; 1975, c. 439; 1985, c. 360; 1987, c. 693; 1992, cc. 356, 746 § 63.1-194.6; 1993, cc. 730, 742; 1995, c. 401; 1996, c. 747; 1997, c. 427; 1998, cc. 551, 581; 2002, c. 747; 2005, cc. 610, 924; 2013, cc. 182, 545; 2015, cc. 758, 770.

**§ 63.2-1703. Variances**

The Commissioner may grant a variance to a regulation when the Commissioner determines that (i) a licensee or applicant for licensure as an assisted living facility, adult day center or child welfare agency has demonstrated that the implementation of a regulation would impose a substantial financial or programmatic hardship and (ii) the variance would not adversely affect the safety and

well-being of residents, participants or children in care. The Commissioner shall review each allowable variance at least annually. At a minimum, this review shall address the impact of the allowable variance on persons in care, adherence by the licensee to any conditions attached, and the continuing need for the allowable variance.

Code 1950, § 63-233; 1968, cc. 578, 585, § 63.1-196; 1972, c. 540; 1974, c. 419; 1975, c. 386; 1979, c. 483; 1985, c. 384; 1992, c. 666; 1993, cc. 730, 742; 1999, c. 740; 2002, c. 747.

**§ 63.2-1704. Voluntary registration of family day homes; inspections; investigation upon receipt of complaint; revocation or suspension of registration**

A. Any person who maintains a family day home serving fewer than five children, exclusive of the provider's own children and any children who reside in the home, may apply for voluntary registration. An applicant for voluntary registration shall file with the Commissioner, prior to beginning any such operation and thereafter biennially, an application which shall include, but not be limited to, the following:

1. The name, address, phone number, and social security number of the person maintaining the family day home;

2. The number and ages of the children to receive care;

3. A sworn statement or affirmation in which the applicant attests to the accuracy of the information submitted to the Commissioner; and

4. Documentation that the background check requirements for registered child welfare agencies in Article 3 (§ 63.2-1719 et seq.) have been met.

B. The Board shall adopt regulations for voluntarily registered family day homes that include, but are not limited to:

1. The criteria and process for the approval of the certificate of registration;

2. Requirements for a self-administered health and safety guidelines evaluation checklist;

3. A schedule for fees to be paid by the providers to the contract organization or to the Department if it implements the provisions of this section for processing applications for the voluntary registration of family day homes. The charges collected shall be maintained for the purpose of recovering administrative costs incurred in processing applications and certifying such homes as eligible or registered;

4. The criteria and process for the renewal of the certificate of registration; and

5. The requirement that upon receipt of a complaint concerning a registered family day home, the Commissioner shall cause an investigation to be made, including on-site visits as he deems necessary, of the activities, services, and facilities. The person who maintains such home shall afford the Commissioner reasonable opportunity to inspect the operator's facilities and records and to interview any employees and any child or other person within his custody or control. Whenever a

registered family day home is determined by the Commissioner to be in noncompliance with the regulations for voluntarily registered family day homes, the Commissioner shall give reasonable notice to the operator of the nature of the noncompliance and may thereafter revoke or suspend the registration.

C. Upon receiving the application on forms prescribed by the Commissioner, and after having determined that the home has satisfied the requirements of the regulations for voluntarily registered family day homes, the Commissioner shall issue a certificate of registration to the family day home.

D. The Commissioner shall contract in accordance with the requirements of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) with qualified local agencies and community organizations to review applications and certify family day homes as eligible for registration, pursuant to the regulations for voluntarily registered family day homes. If no qualified local agencies or community organizations are available, the Commissioner shall implement the provisions of this section. "Qualified" means demonstrated ability to provide sound financial management and administrative services including application processing, maintenance of records and reports, technical assistance, consultation, training, monitoring, and random inspections.

E. The scope of services in contracts shall include:

1. The identification of family day homes which may meet the standards for voluntary registration provided in subsection A; and

2. A requirement that the contract organization shall provide administrative services, including, but not limited to, processing applications for the voluntary registration of family day homes; certifying such homes as eligible for registration; providing technical assistance, training and consultation with family day homes; ensuring providers' compliance with the regulations for voluntarily registered family day homes, including monitoring and random inspections; and maintaining permanent records regarding all family day homes which it may certify as eligible for registration.

F. The contract organization, upon determining that a family day home has satisfied the requirements of the regulations for voluntarily registered family day homes, shall certify the home as eligible for registration on forms prescribed by the Commissioner. The Commissioner, upon determining that certification has been properly issued, may register the family day home.

G. The provisions of this section shall not apply to any family day home located in a county, city, or town in which the governing body provides by ordinance for the regulation and licensing of persons who provide child-care services for compensation and for the regulation and licensing of child-care facilities pursuant to the provisions of § 15.2-914.

1991, c. 595, § 63.1-196.04; 1992, c. 746; 1993, cc. 730, 742; 2002, c. 747; 2009, c. 29; 2015, cc. 758, 770.

**§ 63.2-1704.1. Unlicensed and unregistered family day homes; notice to parents**

Every unlicensed, unregistered family day home shall provide written notice to the parents of every child receiving care, at the time the family day home begins providing care for the child, stating that the family day home is not regulated by the Department and referring parents to a website maintained by the Department for additional information regarding licensed, registered, and unlicensed, unregistered family day homes. The provisions of this section shall not apply to an unlicensed, unregistered family day home in which all of the children receiving care are related to the provider by blood or marriage.

2015, cc. 758, 770.

**§ 63.2-1705. Compliance with Uniform Statewide Building Code**

A. Buildings licensed as assisted living facilities, adult day care centers and child welfare agencies shall be classified by and meet the specifications for the proper Use Group as required by the Virginia Uniform Statewide Building Code.

B. Buildings used for assisted living facilities or adult day care centers shall be licensed for ambulatory or nonambulatory residents or participants. Ambulatory means the condition of a resident or participant who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by the Uniform Statewide Building Code without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such resident or participant may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate. Nonambulatory means the condition of a resident or participant who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.

1981, c. 275, § 63.1-174.1; 1986, c. 430; 1989, c. 173; 1991, c. 532; 1992, c. 356, § 63.1-194.4; 1993, cc. 957, 993; 1998, c. 552; 2002, c. 747.

**§ 63.2-1706. Inspections and interviews**

A. Applicants for licensure and licensees shall at all times afford the Commissioner reasonable opportunity to inspect all of their facilities, books and records, and to interview their agents and employees and any person living or participating in such facilities, or under their custody, control, direction or supervision. Interviews conducted pursuant to this section with persons living or participating in a facility operated by or under the custody, control, direction, or supervision of an applicant for licensure or a licensee shall be (i) authorized by the person to be interviewed or his legally authorized representative and (ii) limited to discussion of issues related to the applicant's or licensee's compliance with applicable laws and regulations, including ascertaining if assessments and reassessments of residents' cognitive and physical needs are performed as required under regulations of the Board.

B. For any adult day care center issued a license or renewal thereof for a period of six months, the Commissioner shall make at least two inspections during the six-month period, one of which shall be unannounced. For any adult day care center issued a license or renewal thereof for a period of one year, the Commissioner shall make at least three inspections each year, at least two of which shall be unannounced. For any adult day care center issued a license or a renewal thereof for a period of two years, the Commissioner shall make at least two inspections each year, at least one of which shall be unannounced. For any adult day care center issued a three-year license, the Commissioner shall make at least one inspection each year, which shall be unannounced.

For any assisted living facility issued a license or renewal thereof for a period of six months, the Commissioner shall make at least two inspections during the six-month period, one of which shall be unannounced. For any assisted living facility issued a license or renewal thereof for a period of one, two, or three years, the Commissioner shall make at least one inspection each year, which shall be unannounced, and as needed based on compliance with applicable laws and regulations.

C. All licensed child welfare agencies shall be inspected not less than twice annually, and one of those inspections shall be unannounced.

D. The activities, services and facilities of each applicant for renewal of his license as an assisted living facility, adult day care center or child welfare agency shall be subject to an inspection or examination by the Commissioner to determine if he is in compliance with current regulations of the Board.

E. For any licensed assisted living facility, adult day care center or child welfare agency, the Commissioner may authorize such other announced or unannounced inspections as the Commissioner considers appropriate.

Code 1950, §§ 63-224, 63-247; 1954, c. 259; 1968, c. 578, §§ 63.1-177, 63.1-210; 1972, c. 540, § 63.1-196.1; 1973, c. 227; 1979, c. 73; 1987, c. 698; 1988, cc. 61, 151; 1991, c. 532; 1992, cc. 356, 666, § 63.1-194.7; 1993, cc. 957, 993; 1999, c. 964; 2000, c. 130; 2002, c. 747; 2010, c. 603; 2012, cc. 803, 835.

**§ 63.2-1707. Issuance or refusal of license; notification; provisional and conditional licenses**

Upon completion of his investigation, the Commissioner shall issue an appropriate license to the applicant if (i) the applicant has made adequate provision for such activities, services, and facilities as are reasonably conducive to the welfare of the residents, participants, or children over whom he may have custody or control; (ii) at the time of initial application, the applicant has submitted an operating budget and at least one credit reference; (iii) he is, or the officers and agents of the applicant if it is an association, partnership, limited liability company, or corporation are, of good character and reputation; and (iv) the applicant and agents comply with the provisions of this subtitle. Otherwise, the license shall be denied. Immediately upon taking final action, the Commissioner shall notify the applicant of such action.

Upon completion of the investigation for the renewal of a license, the Commissioner may issue a provisional license to any applicant if the applicant is temporarily unable to comply with all of the licensure requirements. The provisional license may be renewed, but the issuance of a provisional license and any renewals thereof shall be for no longer a period than six successive months. A copy of the provisional license shall be prominently displayed by the provider at each public entrance of the subject facility and shall be printed in a clear and legible size and style. In addition, the facility shall be required to prominently display next to the posted provisional license a notice that a description of specific violations of licensing standards to be corrected and the deadline for completion of such corrections is available for inspection at the facility and on the facility's website, if applicable.

At the discretion of the Commissioner, a conditional license may be issued to an applicant to operate a new facility in order to permit the applicant to demonstrate compliance with licensure requirements. Such conditional license may be renewed, but the issuance of a conditional license and any renewals thereof shall be for no longer a period than six successive months.

Code 1950, §§ 63-224.1, 63-236, 63-238; 1954, c. 259; 1968, c. 578, §§ 63.1-178, 63.1-199, 63.1-201; 1981, c. 222; 1985, c. 360; 1987, cc. 130, 692; 1988, c. 199; 1992, cc. 356, 666, § 63.1-194.8; 1993, cc. 730, 742; 1996, c. 747; 1998, cc. 551, 581, 1999, c. 740; 2002, c. 747; 2005, cc. 610, 924; 2013, cc. 182, 545; 2014, c. 118.

**§ 63.2-1708. Records and reports**

Every licensed assisted living facility, licensed adult day care center, licensed or registered child welfare agency, or family day home approved by a family day system shall keep such records and make such reports to the Commissioner as he may require. The forms to be used in the making of such reports shall be prescribed and furnished by the Commissioner.

Code 1950, § 63-240; 1968, c. 578, § 63.1-203; 1978, c. 730; 2000, c. 830; 2002, c. 747.

**§ 63.2-1709. Enforcement and sanctions; assisted living facilities and adult day care centers; interim administration; receivership, revocation, denial, summary suspension**

A. Upon receipt and verification by the Commissioner of information from any source indicating an imminent and substantial risk of harm to residents, the Commissioner may require an assisted living facility to contract with an individual licensed by the Board of Long-Term Care Administrators, to be either selected from a list created and maintained by the Department of Medical Assistance Services or selected from a pool of appropriately licensed administrators recommended by the owner of the assisted living facility, to administer, manage, or operate the assisted living facility on an interim basis, and to attempt to bring the facility into compliance with all relevant requirements of law, regulation, or any plan of correction approved by the Commissioner. Such contract shall require the interim administrator to comply with any and all requirements established by the Department to ensure the health, safety, and welfare of the residents. Prior to or upon conclusion of the period of interim administration, management, or operation, an inspection shall be conducted to determine whether operation of the assisted living facility shall be

permitted to continue or should cease. Such interim administration, management, or operation shall not be permitted when defects in the conditions of the premises of the assisted living facility (i) present imminent and substantial risks to the health, safety, and welfare of residents, and (ii) may not be corrected within a reasonable period of time. Any decision by the Commissioner to require the employment of a person to administer, manage, or operate an assisted living facility shall be subject to the rights of judicial review and appeal as provided in the Administrative Process Act (§ 2.2-4000 et seq.). Actual and reasonable costs of such interim administration shall be the responsibility of and shall be borne by the owner of the assisted living facility.

B. The Board shall adopt regulations for the Commissioner to use in determining when the imposition of administrative sanctions or initiation of court proceedings, severally or jointly, is appropriate in order to ensure prompt correction of violations in assisted living facilities and adult day care centers involving noncompliance with state law or regulation as discovered through any inspection or investigation conducted by the Departments of Social Services, Health, or Behavioral Health and Developmental Services. The Commissioner may impose such sanctions or take such actions as are appropriate for violation of any of the provisions of this subtitle or any regulation adopted under any provision of this subtitle that adversely affects the health, safety or welfare of an assisted living facility resident or an adult day care participant. Such sanctions or actions may include (i) petitioning the court to appoint a receiver for any assisted living facility or adult day care center and (ii) revoking or denying renewal of the license for the assisted living facility or adult day care center for violation of any of the provisions of this subtitle, § 54.1-3408 or any regulation adopted under this subtitle that violation adversely affects, or is an imminent and substantial threat to, the health, safety or welfare of the person cared for therein, or for permitting, aiding or abetting the commission of any illegal act in an assisted living facility or adult day care center.

C. The Commissioner may issue a summary order of suspension of the license to operate the assisted living facility pursuant to the procedures hereinafter set forth in conjunction with any proceeding for revocation, denial, or other action when conditions or practices exist that pose an imminent and substantial threat to the health, safety, and welfare of the residents. Before a summary order of suspension shall take effect, the Commissioner shall issue to the assisted living facility a notice of summary order of suspension setting forth (i) the procedures for the summary order of suspension, (ii) hearing and appeal rights as provided under this subsection, and (iii) facts and evidence that formed the basis for which the summary order of suspension is sought. Such notice shall be served on the assisted living facility or its designee as soon as practicable thereafter by personal service or certified mail, return receipt requested, to the address of record of the assisted living facility. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be presided over by a hearing officer selected by the Commissioner from a list prepared by the Executive Secretary of the Supreme Court of Virginia and shall be held as soon as practicable, but in no event later than 15 business days following

service of the notice of hearing; however, the hearing officer may grant a written request for a continuance, not to exceed an additional 10 business days, for good cause shown. After such hearing, the hearing officer shall provide to the Commissioner written findings and conclusions, together with a recommendation whether the license should be summarily suspended, whereupon the Commissioner shall adopt the hearing officer's recommended decision unless to do so would be an error of law or Department policy. Any final agency case decision in which the Commissioner rejects a hearing officer's recommended decision shall state with particularity the basis for rejection. The Commissioner shall issue: (a) a final order of summary suspension or (b) an order that summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the assisted living facility may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following service of the order. A copy of any final order of summary suspension shall be prominently displayed by the provider at each public entrance of the facility, or in lieu thereof, the provider may display a written statement summarizing the terms of the order in a prominent location, printed in a clear and legible size and typeface, and identifying the location within the facility where the final order of summary suspension may be reviewed.

Upon appeal, the sole issue before the court shall be whether the Department had reasonable grounds to require the assisted living facility to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. Any concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary order of suspension. Failure to comply with the summary order of suspension shall constitute an offense under subdivision 1 of § 63.2-1712. All agencies and subdivisions of the Commonwealth shall cooperate with the Commissioner in the relocation of residents of an assisted living facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to residents.

D. Notice of the Commissioner's intent to revoke or deny renewal of the license for the assisted living facility shall be provided by the Department and a copy of such notice shall be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations. In determining whether to deny, revoke, or summarily suspend a license, the Commissioner may choose to deny, revoke, or summarily suspend only certain authority of the assisted living facility to operate, and may restrict or modify the assisted living facility's authority to provide certain services or perform certain functions that the Commissioner determines should be restricted or modified in order to protect the health, safety, or welfare of the residents. Such denial, revocation, or summary suspension of certain services or functions may be appealed as otherwise provided in this subtitle for any denial, revocation, or summary suspension.

Code 1950, § 63-249; 1968, c. 578, § 63.1-212; 1991, c. 532, § 63.1-179.1; 1992, c. 356, § 63.1-194.9; 1993, cc. 730, 742, 957, 993, § 63.1-211.3; 1998, cc. 115, 397, 850; 2002, c. 747; 2005, cc. 610, 924; 2009, cc. 813, 840.

**§ 63.2-1709.1. Enforcement and sanctions; child welfare agencies; revocation and denial**
The Commissioner may revoke or deny the renewal of the license of any child welfare agency that violates any provision of this subtitle or fails to comply with the limitations and standards set forth in its license.

2005, cc. 610, 924.

**§ 63.2-1709.2. Enforcement and sanctions; special orders; civil penalties**
A. Notwithstanding any other provision of law, following a proceeding as provided in § 2.2-4019, the Commissioner may issue a special order (i) for violation of any of the provisions of this subtitle, § 54.1-3408, or any regulation adopted under any provision of this subtitle which violation adversely affects, or is an imminent and substantial threat to, the health, safety, or welfare of the person cared for therein, or (ii) for permitting, aiding, or abetting the commission of any illegal act in an assisted living facility, adult day care center, or child welfare agency. Notice of the Commissioner's intent to take any of the actions enumerated in subdivisions B 1 through B 7 shall be provided by the Department and a copy of such notice shall be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001. The Commissioner shall not delegate his authority to impose civil penalties in conjunction with the issuance of special orders.

B. The Commissioner may take the following actions regarding assisted living facilities, adult day care centers, and child welfare agencies through the issuance of a special order and may require a copy of the special order provided by the Department to be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations:

1. Place a licensee on probation upon finding that the licensee is substantially out of compliance with the terms of its license and that the health and safety of residents, participants, or children are at risk;

2. Reduce licensed capacity or prohibit new admissions when the Commissioner concludes that the licensee cannot make necessary corrections to achieve compliance with regulations except by a temporary restriction of its scope of service;

3. Mandate training for the licensee or licensee's employees, with any costs to be borne by the licensee, when the Commissioner concludes that the lack of such training has led directly to violations of regulations;

4. Assess civil penalties for each day the assisted living facility is or was out of compliance with the terms of its license and the health, safety, and welfare of residents are at risk, which shall be paid into the state treasury and credited to the Assisted Living Facility Education, Training, and Technical Assistance Fund created pursuant to § 63.2-1803.1. The aggregate amount of such civil penalties shall not exceed $10,000 for assisted living facilities in any 24-month period. Criteria for imposition of civil penalties and amounts, expressed in ranges, shall be developed by the Board,

and shall be based upon the severity, pervasiveness, duration, and degree of risk to the health, safety, or welfare of residents. Such civil penalties shall be applied by the Commissioner in a consistent manner. Such criteria shall also provide that (i) the Commissioner may accept a plan of correction, including a schedule of compliance, from an assisted living facility prior to setting a civil penalty, and (ii) the Commissioner may reduce or abate the penalty amount if the facility complies with the plan of correction within its terms.

A single act, omission, or incident shall not give rise to imposition of multiple civil penalties even though such act, omission, or incident may violate more than one statute or regulation. A civil penalty that is not appealed becomes due on the first day after the appeal period expires. The license of an assisted living facility that has failed to pay a civil penalty due under this section shall not be renewed until the civil penalty has been paid in full, with interest, provided that the Commissioner may renew a license when an unpaid civil penalty is the subject of a pending appeal;

5. Assess civil penalties of not more than $500 per inspection upon finding that the adult day care center or child welfare agency is substantially out of compliance with the terms of its license and the health and safety of residents, participants, or children are at risk;

6. Require licensees to contact parents, guardians, or other responsible persons in writing regarding health and safety violations; and

7. Prevent licensees who are substantially out of compliance with the licensure terms or in violation of the regulations from receiving public funds.

C. The Board shall adopt regulations to implement the provisions of this section.

2005, cc. 610, 924.

**§ 63.2-1709.3. Child-placing agencies; conscience clause**

A. To the extent allowed by federal law, no private child-placing agency shall be required to perform, assist, counsel, recommend, consent to, refer, or participate in any placement of a child for foster care or adoption when the proposed placement would violate the agency's written religious or moral convictions or policies.

B. The Commissioner shall not deny an application for an initial license or renewal of a license or revoke the license of a private child-placing agency because of the agency's objection to performing, assisting, counseling, recommending, consenting to, referring, or participating in a placement that violates the agency's written religious or moral convictions or policies.

C. A state or local government entity may not deny a private child-placing agency any grant, contract, or participation in a government program because of the agency's objection to performing, assisting, counseling, recommending, consenting to, referring, or participating in a placement that violates the agency's written religious or moral convictions or policies.

D. Refusal of a private child-placing agency to perform, assist, counsel, recommend, consent to, refer, or participate in a placement that violates the agency's written religious or moral convictions or policies shall not form the basis of any claim for damages.

2012, cc. 690, 715.

**§ 63.2-1710. Appeal from refusal, denial of renewal or revocation of license**

A. Whenever the Commissioner refuses to issue a license or to renew a license, or revokes a license for an assisted living facility, adult day care center or child welfare agency, the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall apply, except that all appeals from notice of the Commissioner's intent to refuse to issue or renew, or revoke a license shall be received in writing from the assisted living facility, adult day care center or child welfare agency operator within fifteen days of the date of receipt of the notice. Judicial review of a final review agency decision shall be in accordance with the provisions of the Administrative Process Act. No stay may be granted upon appeal to the Virginia Supreme Court.

B. In every appeal to a court of record, the Commissioner shall be named defendant.

C. An appeal, taken as provided in this section, shall operate to stay any criminal prosecution for operation without a license.

D. When issuance or renewal of a license as an assisted living facility or adult day care center has been refused by the Commissioner, the applicant shall not thereafter for a period of one year apply again for such license unless the Commissioner in his sole discretion believes that there has been such a change in the conditions on account of which he refused the prior application as to justify considering the new application. When an appeal is taken by the applicant pursuant to subsection A, the one-year period shall be extended until a final decision has been rendered on appeal.

E. When issuance or renewal of a license for a child welfare agency has been refused by the Commissioner, the applicant shall not thereafter for a period of six months apply again for such license unless the Commissioner in his sole discretion believes that there has been such a change in the conditions on account of which he refused the prior application as to justify considering the new application. When an appeal is taken by the applicant pursuant to subsection A, the six-month period shall be extended until a final decision has been rendered on appeal.

Code 1950, §§ 63-224.3, 63-250; 1954, c. 259; 1968, c. 578, §§ 63.1-180, 63.1-213; 1973, c. 227; 1975, c. 539; 1986, c. 615; 1991, c. 532; 1992, c. 356, § 63.1-194.10; 1993, cc. 957, 993; 1998, c. 850; 2002, c. 747.

**§ 63.2-1711. Injunction against operation without license**

Any circuit court having jurisdiction in the county or city where the principal office of any assisted living facility, adult day care center or child welfare agency is located shall, at the suit of the Commissioner, have jurisdiction to enjoin its operation without a license required by this subtitle.

Code 1950, §§ 63-224.2, 63-251; 1954, c. 259; 1968, c. 578, §§ 63.1-181, 63.1-214; 1973, c. 227; 1992, c. 356, § 63.1-194.11; 1993, cc. 957, 993; 2002, c. 747.

**§ 63.2-1712. Offenses; penalty**

Any person, and each officer and each member of the governing board of any association or corporation that operates an assisted living facility, adult day care center or child welfare agency, shall be guilty of a Class 1 misdemeanor if he:

1. Interferes with any representative of the Commissioner in the discharge of his duties under this subtitle;

2. Makes to the Commissioner or any representative of the Commissioner any report or statement, with respect to the operation of any assisted living facility, adult day care center or child welfare agency, that is known by such person to be false or untrue;

3. Operates or engages in the conduct of an assisted living facility, adult day care center or child welfare agency without first obtaining a license as required by this subtitle or after such license has been revoked or has expired and not been renewed. No violation shall occur if the facility, center or agency has applied to the Department for renewal prior to the expiration date of the license. Every day's violation of this subdivision shall constitute a separate offense; or

4. Operates or engages in the conduct of an assisted living facility, adult day care center or child welfare agency serving more persons than the maximum stipulated in the license.

Code 1950, §§ 63-227, 63-252; 1954, c. 259; 1968, c. 578, §§ 63.1-182, 63.1-215; 1973, c. 227; 1992, c. 356, § 63.1-194.12; 1993, cc. 957, 993; 2002, c. 747.

**§ 63.2-1713. Misleading advertising prohibited**

No assisted living facility, adult day care center or child welfare agency shall make, publish, disseminate, circulate, or place before the public or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public in this Commonwealth, in a newspaper or other publication; in the form of a book, notice, handbill, poster, blueprint, map, bill, tag, label, circular, pamphlet, or letter; or via electronic mail, website, automatic mailing list services (listservs), newsgroups, facsimile, chat rooms; or in any other way an advertisement of any sort regarding services or anything so offered to the public, which advertisement contains any promise, assertion, representation or statement of fact that is untrue, deceptive or misleading.

1993, cc. 730, 742, § 63.1-201.1; 2002, c. 747.

**§ 63.2-1714. Duty of attorneys for the Commonwealth**

It shall be the duty of the attorney for the Commonwealth of every county and city to prosecute all violations of this subtitle.

Code 1950, §§ 63-227, 63-253; 1954, c. 259; 1968, c. 578, §§ 63.1-182, 63.1-216; 1973, c. 227; 1992, c. 356, § 63.1-194.12; 1993, cc. 957, 993; 2002, c. 747.

## Article 2 - UNLICENSED PROGRAMS

### § 63.2-1715. Exemptions from licensure

A. The following child day programs shall not be required to be licensed:

1. A child day center that has obtained an exemption pursuant to § 63.2-1716.

2. A program where, by written policy given to and signed by a parent or guardian, school-aged children are free to enter and leave the premises without permission or supervision, regardless of (i) such program's location or the number of days per week of its operation; (ii) the provision of transportation services, including drop-off and pick-up times; or (iii) the scheduling of breaks for snacks, homework, or other activities. A program that would qualify for this exemption except that it assumes responsibility for the supervision, protection and well-being of several children with disabilities who are mainstreamed shall not be subject to licensure.

3. A program of instructional experience in a single focus, such as, but not limited to, computer science, archaeology, sport clinics, or music, if children under the age of six do not attend at all and if no child is allowed to attend for more than 25 days in any three-month period commencing with enrollment. This exemption does not apply if children merely change their enrollment to a different focus area at a site offering a variety of activities and such children's attendance exceeds 25 days in a three-month period.

4. Programs of instructional or recreational activities wherein no child under age six attends for more than six hours weekly with no class or activity period to exceed one and one-half hours, and no child six years of age or above attends for more than six hours weekly when school is in session or 12 hours weekly when school is not in session. Competition, performances and exhibitions related to the instructional or recreational activity shall be excluded when determining the hours of program operation.

5. A program that operates no more than a total of 20 program days in the course of a calendar year provided that programs serving children under age six operate no more than two consecutive weeks without a break of at least a week.

6. Instructional programs offered by private schools that satisfy compulsory attendance laws or the Individuals with Disabilities Education Act, as amended, and programs of school-sponsored extra-curricular activities that are focused on single interests such as, but not limited to, music, sports, drama, civic service, or foreign language.

7. Instructional programs offered by public schools that serve preschool-age children or that satisfy compulsory attendance laws or the Individuals with Disabilities Education Act, as amended, and programs of school-sponsored extracurricular activities that are focused on single interests such as, but not limited to, music, sports, drama, civic service, or foreign language.

8. Early intervention programs for children eligible under Part C of the Individuals with Disabilities Education Act, as amended, wherein no child attends for more than a total of six hours per week.

9. Practice or competition in organized competitive sports leagues.

10. Programs of religious instruction, such as Sunday schools, vacation Bible schools, and Bar Mitzvah or Bat Mitzvah classes, and child-minding services provided to allow parents or guardians who are on site to attend religious worship or instructional services.

11. Child-minding services that are not available for more than three hours per day for any individual child offered on site in commercial or recreational establishments if the parent or guardian (i) is not an on-duty employee, except for part-time employees working less than two hours per day, (ii) can be contacted and can resume responsibility for the child's supervision within 30 minutes, and (iii) is receiving or providing services or participating in activities offered by the establishment.

12. A certified preschool or nursery school program operated by a private school that is accredited by a statewide accrediting organization recognized by the State Board of Education or accredited by the National Association for the Education of Young Children's National Academy of Early Childhood Programs; the Association of Christian Schools International; the American Association of Christian Schools; the National Early Childhood Program Accreditation; the National Accreditation Council for Early Childhood Professional Personnel and Programs; the International Academy for Private Education; the American Montessori Society; the International Accreditation and Certification of Childhood Educators, Programs, and Trainers; or the National Accreditation Commission that complies with the provisions of § 63.2-1717.

13. A program of recreational activities offered by local governments, staffed by local government employees, and attended by school-age children. Such programs shall be subject to safety and supervisory standards established by local governments.

14. A program of instructional or athletic experience operated during the summer months by, and as an extension of, an accredited private elementary, middle, or high school program as set forth in § 22.1-19 and administered by the Virginia Council for Private Education.

B. Family day homes that are members of a licensed family day system shall not be required to obtain a license from the Commissioner.

C. Officers, employees, or agents of the Commonwealth, or of any county, city, or town acting within the scope of their authority as such, who serve as or maintain a child-placing agency shall not be required to be licensed.

1993, cc. 730, 742, § 63.1-196.001; 1994, cc. 837, 940; 1999, c. 454; 2000, cc. 61, 1058; 2002, c. 747; 2003, c. 467; 2006, c. 725; 2011, c. 363; 2014, c. 130; 2016, c. 442.

**§ 63.2-1716. Child day center operated by religious institution exempt from licensure; annual statement and documentary evidence required; enforcement; injunctive relief**

A. Notwithstanding any other provisions of this chapter, a child day center, including a child day center that is a child welfare agency operated or conducted under the auspices of a religious institution shall be exempt from the licensure requirements of this subtitle, but shall comply with the provisions of this section unless it chooses to be licensed. If such religious institution chooses not to be licensed, it shall file with the Commissioner, prior to beginning operation of a child day center and thereafter annually, a statement of intent to operate a child day center, certification that the child day center has disclosed in writing to the parents or guardians of the children in the center the fact that it is exempt from licensure, the qualifications of the personnel employed therein and documentary evidence that:

1. Such religious institution has tax exempt status as a nonprofit religious institution in accordance with § 501(c) of the Internal Revenue Code of 1954, as amended, or that the real property owned and exclusively occupied by the religious institution is exempt from local taxation.

2. Within the prior 90 days for the initial exemption and within the prior 180 days for exemptions thereafter, the local health department and local fire marshal or Office of the State Fire Marshal, whichever is appropriate, have inspected the physical facilities of the child day center and have determined that the center is in compliance with applicable laws and regulations with regard to food service activities, health and sanitation, water supply, building codes, and the Statewide Fire Prevention Code or the Uniform Statewide Building Code.

3. The child day center employs supervisory personnel according to the following ratio of staff to children:

a. One staff member to four children from zero to twenty-four months.

b. One staff member to ten children from ages twenty-four months to six years.

c. One staff member to twenty-five children ages six years and older.

Staff shall be counted in the required staff-to-children ratios only when they are directly supervising children. In each grouping of children, at least one adult staff member shall be regularly present. However, during designated daily rest periods and designated sleep periods of evening and overnight care programs, for children ages 24 months to six years, only one staff member shall be required to be present with the children under supervision. In such cases, at least one staff member shall be physically present in the same space as the children under supervision at all times. Other staff members counted for purposes of the staff-to-child ratio need not be physically present in the same space as the resting or sleeping children, but shall be present on the same floor as the resting or sleeping children and shall have no barrier to their immediate access to the resting or sleeping children. The staff member who is physically present in the same space as the sleeping children shall be able to summon additional staff counted in the staff-to-child ratio without leaving the space in which the resting or sleeping children are located.

Staff members shall be at least 16 years of age. Staff members under 18 years of age shall be under the supervision of an adult staff member. Adult staff members shall supervise no more than two staff members under 18 years of age at any given time.

4. Each person in a supervisory position has been certified by a practicing physician or physician assistant to be free from any disability which would prevent him from caring for children under his supervision.

5. The center is in compliance with the requirements of:

a. This section.

b. Section 63.2-1724 relating to background checks.

c. Section 63.2-1509 relating to the reporting of suspected cases of child abuse and neglect.

d. Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 regarding a valid Virginia driver's license or commercial driver's license; of Article 21 (§ 46.2-1157 et seq.) of Chapter 10 of Title 46.2, regarding vehicle inspections; ensuring that any vehicle used to transport children is an insured motor vehicle as defined in § 46.2-705; and Article 13 (§ 46.2-1095 et seq.) of Chapter 10 of Title 46.2, regarding child restraint devices.

6. The following aspects of the child day center's operations are described in a written statement provided to the parents or guardians of the children in the center and made available to the general public: physical facilities, enrollment capacity, food services, health requirements for the staff and public liability insurance.

B. The center shall establish and implement procedures for:

1. Hand washing by staff and children before eating and after toileting and diapering.

2. Appropriate supervision of all children in care, including daily intake and dismissal procedures to ensure safety of children.

3. A daily simple health screening and exclusion of sick children by a person trained to perform such screenings.

4. Ensuring that a person trained and certified in first aid is present at the center whenever children are present.

5. Ensuring that all children in the center are in compliance with the provisions of § 32.1-46 regarding the immunization of children against certain diseases.

6. Ensuring that all areas of the premises accessible to children are free of obvious injury hazards, including providing and maintaining sand or other cushioning material under playground equipment.

7. Ensuring that all staff are able to recognize the signs of child abuse and neglect.

C. The Commissioner may perform on-site inspections of religious institutions to confirm compliance with the provisions of this section and to investigate complaints that the religious institution is not in compliance with the provisions of this section. The Commissioner may revoke the exemption for any child day center in serious or persistent violation of the requirements of this section. If a religious institution operates a child day center and does not file the statement and documentary evidence required by this section, the Commissioner shall give reasonable notice to such religious institution of the nature of its noncompliance and may thereafter take such action as he determines appropriate, including a suit to enjoin the operation of the child day center.

D. Any person who has reason to believe that a child day center falling within the provisions of this section is not in compliance with the requirements of this section may report the same to the local department, the local health department or the local fire marshal, each of which may inspect the child day center for noncompliance, give reasonable notice to the religious institution, and thereafter may take appropriate action as provided by law, including a suit to enjoin the operation of the child day center.

E. Nothing in this section shall prohibit a child day center operated by or conducted under the auspices of a religious institution from obtaining a license pursuant to this chapter.

1979, c. 425, § 63.1-196.3; 1989, c. 258; 1993, cc. 730, 742; 2000, c. 283; 2002, c. 747; 2004, c. 113; 2006, c. 396; 2009, c. 258.

**§ 63.2-1717. Certification of preschool or nursery school programs operated by accredited private schools; provisional certification; annual statement and documentary evidence required; enforcement; injunctive relief**

A. A preschool or nursery school program operated by a private school accredited by a statewide accrediting organization recognized by the Board of Education or a private school or preschool that offers to preschool-aged children a program accredited by the National Association for the Education of Young Children's National Academy of Early Childhood Programs; the Association of Christian Schools International; the American Association of Christian Schools; the National Early Childhood Program Accreditation; the National Accreditation Council for Early Childhood Professional Personnel and Programs; the International Academy for Private Education; the American Montessori Society; the International Accreditation and Certification of Childhood Educators, Programs, and Trainers; or the National Accreditation Commission and is recognized by the Board of Education, shall be exempt from licensure under this subtitle if it complies with the provisions of this section and meets the requirements of subsection B, C or D.

B. A school described in subsection A shall meet the following conditions in order to be exempt under this subsection:

1. The school offers kindergarten or elementary school instructional programs that satisfy compulsory school attendance laws, and children below the age of compulsory school attendance also participate in such instructional programs;

2. The instructional programs for children of and below the age of eligibility for school attendance share (i) a specific verifiable common pedagogy, (ii) education materials, (iii) methods of instruction, and (iv) professional training and individual teacher certification standards, all of which are required by a state-recognized accrediting organization;

3. The instructional programs described in subdivisions 1 and 2 have mixed age groups of three-year-old to six-year-old children and the number of pupils in the preschool program does not exceed 15 pupils for each instructional adult;

4. The instructional program contemplates a three-to-four-year learning cycle under a common pedagogy; and

5. Children below the age of eligibility for kindergarten attendance do not attend the instructional program for more than four hours per day.

C. A school described in subsection A shall be exempt from licensure if it maintains an enrollment ratio at any one time during the current school year of five children age five or above to one four-year-old child as long as no child in attendance is under age four and the number of pupils in the preschool program does not exceed 12 pupils for each instructional adult.

D. A private school or preschool described in subsection A shall meet the following conditions in order to be exempt under this subsection:

1. The school offers instructional classes and has been in operation since January 1984.

2. The school does not hold itself out as a child care center, child day center, or child day program.

3. Children enrolled in the school are at least three years of age and do not attend more than (i) three hours per day and (ii) five days per week.

4. The enrolled children attend only one program offered by the school per day.

5. The school maintains a certificate or permit issued pursuant to a local government ordinance that addresses health, safety and welfare of the children, such as but not limited to space requirements, and requires annual inspections.

E. The school shall file with the Commissioner, prior to the beginning of the school year or calendar year, as the case may be, and thereafter, annually, a statement which includes the following:

1. Intent to operate a certified preschool program;

2. Documentary evidence that the school has been accredited as provided in subsection A;

3. Documentation that the school has disclosed in writing to the parents, guardians, or persons having charge of a child enrolled in the school's preschool program the fact of the program's exemption from licensure;

4. Documentary evidence that the physical facility in which the preschool program will be conducted has been inspected (i) before initial certification by the local building official and (ii) within the 12-month period prior to initial certification and at least annually thereafter by the local health department, and local fire marshal or Office of the State Fire Marshal, whichever is appropriate, and an inspection report which documents that the facility is in compliance with applicable laws and regulations pertaining to food services, health and sanitation, water supply, building codes, and the Statewide Fire Prevention Code or the Uniform Statewide Building Code;

5. Documentation that the school has disclosed the following in writing to the parents, guardians, or persons having charge of a child enrolled in the school's preschool program, and in a written statement available to the general public: (i) the school facility is in compliance with applicable laws and regulations pertaining to food services, health and sanitation, water supply, building codes, and the Statewide Fire Prevention Code or the Uniform Statewide Building Code, (ii) the preschool program's maximum capacity, (iii) the school's policy or practice for pupil-teacher ratio, staffing patterns and staff health requirements, and (iv) a description of the school's public liability insurance, if any;

6. Qualifications of school personnel who work in the preschool program; and

7. Documentary evidence that the private school requires all employees of the preschool and other school employees who have contact with the children enrolled in the preschool program to obtain a criminal record check as provided in subdivision A 11 of § 19.2-389 as a condition of initial or continued employment. The school shall not hire or continue employment of any such person who has an offense specified in § 63.2-1719.

All accredited private schools seeking certification of preschool programs shall file such information on forms prescribed by the Commissioner. The Commissioner shall certify all preschool programs of accredited private schools which comply with the provisions of subsection A.

F. A preschool program of a private school that has not been accredited as provided in subsection A, or which has not provided documentation to the Commissioner that it has initiated the accreditation process, shall be subject to licensure.

The Commissioner shall issue a provisional certificate to a private school which provides documentation to the Commissioner that it has initiated the accreditation process. The provisional certificate shall permit the school to operate its preschool program during the accreditation process period. The issuance of an initial provisional certificate shall be for a period not to exceed one year. A provisional certificate may be renewed up to an additional year if the accrediting organization provides a statement indicating it has visited the school within the previous six months and the school has made sufficient progress. Such programs shall not be subject to licensure during the provisional certification period.

G. If a school fails to complete the accreditation process or is denied accreditation, the Commissioner shall revoke the provisional certification and the program shall thereafter be subject to licensure.

H. If the preschool program of a private school which is accredited as provided in subsection A fails to file the statement and the required documentary evidence, the Commissioner shall notify the school of its noncompliance and may thereafter take such action as he determines appropriate, including notice that the program is required to be licensed.

I. The revocation or denial of the certification of a preschool program shall be subject to appeal pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Judicial review of a final agency decision shall be in accordance with the provisions of the Administrative Process Act.

J. Any person who has reason to believe that a private school falling within the provisions of this section is in noncompliance with any applicable requirement of this section may report the same to the Department, the local department, the local health department, or the local fire marshal, each of which may inspect the school for noncompliance, give reasonable notice to the school of the nature of its noncompliance, and thereafter may take appropriate action as provided by law, including a suit to enjoin the operation of the preschool program.

K. Upon receipt of a complaint concerning a certified preschool program of an accredited private school, or of a private school to which provisional certification has been issued, if for good cause shown there is reason to suspect that the school is in noncompliance with any provision of this section or the health or safety of the children attending the preschool program is in danger, the Commissioner shall cause an investigation to be made, including on-site visits as he deems necessary of the services, personnel, and facilities of the school's program. The school shall afford the Commissioner reasonable opportunity to inspect the school's program, records, and facility, and to interview the employees and any child or parent or guardian of a child who is or has been enrolled in the preschool program. If, upon completion of the investigation, it is determined that the school is in noncompliance with the provisions of this section, the Commissioner shall give reasonable notice to the school of the nature of its noncompliance and thereafter may take appropriate action as provided by law, including a suit to enjoin the operation of the preschool program.

L. Failure of a private school to comply with the provisions of this section, or a finding that the health and safety of the children attending the preschool program are in clear and substantial danger upon the completion of an investigation, shall be grounds for revocation of the certification issued pursuant to this section.

M. If a private school operates a child day program outside the scope of its instructional classes during the school year or operates a child day program during the summer, the child day program shall be subject to licensure under the regulations adopted pursuant to § 63.2-1734.

N. Nothing in this section shall prohibit a preschool operated by or conducted under the auspices of a private school from obtaining a license pursuant to this subtitle.

1993, cc. 730, 742, § 63.1-196.3:1; 1994, cc. 837, 940; 1999, c. 454; 2002, c. 747; 2003, c. 467.

**§ 63.2-1718. Inspection of unlicensed child or adult care operations; inspection warrant**

In order to perform his duties under this subtitle, the Commissioner may enter and inspect any unlicensed child or adult care operation with the consent of the owner or person in charge, or pursuant to a warrant. Administrative search warrants for inspections of child or adult care operations, based upon a petition demonstrating probable cause and supported by an affidavit, may be issued ex parte by any judge having authority to issue criminal warrants whose territorial jurisdiction includes the child or adult care operation to be inspected, if he is satisfied from the petition and affidavit that there is reasonable and probable cause for the inspection. The affidavit shall contain either a statement that consent to inspect has been sought and refused, or that facts and circumstances exist reasonably justifying the failure to seek such consent. Such facts may include, without limitation, past refusals to permit inspection or facts establishing reason to believe that seeking consent would provide an opportunity to conceal violations of statutes or regulations. Probable cause may be demonstrated by an affidavit showing probable cause to believe that the child or adult care operation is in violation of any provision of this subtitle or any regulation adopted pursuant to this subtitle, or upon a showing that the inspection is to be made pursuant to a reasonable administrative plan for the administration of this subtitle. The inspection of a child or adult care operation that has been the subject of a complaint pursuant to § 63.2-1728 shall have preeminent priority over any other inspections of child or adult care operations to be made by the Commissioner unless the complaint on its face or in the context of information known to the Commissioner discloses that the complaint has been brought to harass, to retaliate, or otherwise to achieve an improper purpose, and that the improper purpose casts serious doubt on the veracity of the complaint. After issuing a warrant under this section, the judge shall file the affidavit in the manner prescribed by § 19.2-54. Such warrant shall be executed and returned to the clerk of the circuit court of the city or county wherein the inspection was made.

1993, cc. 730, 742, § 63.1-198.04; 2002, c. 747; 2014, c. 354.

## Article 3 - BACKGROUND CHECKS

**§ 63.2-1719. Definitions**

As used in this subtitle:

"Barrier crime" means a conviction of a felony violation of a protective order as set out in § 16.1-253.2, murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A or B of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, extortion by threat as set out in § 18.2-59, threats of

death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, a felony violation of a protective order as set out in § 18.2-60.4, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203, or an equivalent offense in another state. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, "barrier crime" shall also include convictions of burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2 and any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an equivalent offense in another state.

"Offense" means a barrier crime and, in the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, (i) a conviction of any offense set forth in § 9.1-902 or a finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, or any similar registry in any other state; (ii) a conviction of any other felony not included in the definition of barrier crime or described in clause (i) unless five years have elapsed since conviction; and (iii) a founded complaint of child abuse or neglect within or outside the Commonwealth. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, convictions shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth.

1985, c. 360, § 63.1-198.1; 1986, cc. 300, 627; 1987, cc. 130, 131, 692, 693; 1992, c. 746; 1993, cc. 730, 742; 1996, c. 747; 1998, cc. 551, 581; 1999, c. 740; 2001, c. 778; 2002, c. 747; 2003, c. 467; 2012, c. 383; 2016, c. 580.

**§ 63.2-1720. (Effective until July 1, 2017) Employment for compensation of persons or use of volunteers convicted of certain offenses prohibited; background check required; penalty**

A. An assisted living facility, adult day care center or child welfare agency licensed or registered in accordance with the provisions of this chapter, or family day homes approved by family day systems, shall not hire for compensated employment or continue to employ persons who have an offense as defined in § 63.2-1719. Such employees shall undergo background checks pursuant to subsection D. In the case of child welfare agencies, the provisions of this section shall apply to employees who are involved in the day-to-day operations of such agency or who are alone with, in control of, or supervising one or more children.

B. A licensed assisted living facility or adult day care center may hire an applicant convicted of one misdemeanor barrier crime not involving abuse or neglect, if five years have elapsed following the conviction.

C. Notwithstanding the provisions of subsection A, a child day center may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 if 10 years have elapsed following the conviction, unless the person committed such offense while employed in a child day center or the object of the offense was a minor.

D. Background checks pursuant to this section require:

1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and, in the case of child welfare agencies, whether or not the person has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. A criminal history record check through the Central Criminal Records Exchange pursuant to § 19.2-389; and

3. In the case of child welfare agencies, a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

E. Any person desiring to work as a compensated employee at a licensed assisted living facility, licensed adult day care center, a licensed or registered child welfare agency, or a family day home approved by a family day system shall provide the hiring or approving facility, center or agency with a sworn statement or affirmation pursuant to subdivision D 1. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision D 1 shall be guilty of a Class 1 misdemeanor.

F. A licensed assisted living facility, licensed adult day care center, a licensed or registered child welfare agency, or a family day home approved by a family day system shall obtain for any compensated employees within 30 days of employment (i) an original criminal record clearance with respect to convictions for offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange and (ii) in the case of licensed or registered child welfare agencies or family day homes approved by family day systems, a copy of the information from the central registry. However, no employee shall be permitted to work in a position that involves

direct contact with a person or child receiving services until an original criminal record clearance or original criminal history record has been received, unless such person works under the direct supervision of another employee for whom a background check has been completed in accordance with the requirements of this section. If an applicant is denied employment because of information from the central registry or convictions appearing on his criminal history record, the assisted living facility, adult day care center or child welfare agency shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

G. No volunteer who has an offense as defined in § 63.2-1719 shall be permitted to serve in a licensed or registered child welfare agency or a family day home approved by a family day system. Any person desiring to volunteer at such a child welfare agency shall provide the agency with a sworn statement or affirmation pursuant to subdivision D 1. Such child welfare agency shall obtain for any volunteers, within 30 days of commencement of volunteer service, a copy of (i) the information from the central registry and (ii) an original criminal record clearance with respect to offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision D 1 shall be guilty of a Class 1 misdemeanor. If a volunteer is denied service because of information from the central registry or convictions appearing on his criminal history record, such child welfare agency shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the volunteer. The provisions of this subsection shall apply only to volunteers who will be alone with any child in the performance of their duties and shall not apply to a parent-volunteer of a child attending a licensed or registered child welfare agency, or a family day home approved by a family day system, whether or not such parent-volunteer will be alone with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children that includes the parent-volunteer's own child in a program that operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section.

H. No volunteer shall be permitted to serve in a licensed assisted living facility or licensed adult day care center without the permission or under the supervision of a person who has received a clearance pursuant to this section.

I. Further dissemination of the background check information is prohibited other than to the Commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

J. A licensed assisted living facility shall notify and provide all students a copy of the provisions of this article prior to or upon enrollment in a certified nurse aide program operated by such assisted living facility.

K. The provisions of this section shall not apply to any children's residential facility licensed pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements contained in § 63.2-1726.

L. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

1985, c. 360, § 63.1-198.1; 1986, cc. 300, 627; 1987, cc. 130, 131, 692, 693; 1992, cc. 746, 844, §§ 63.1-173.2, 63.1-194.13; 1993, cc. 17, 657, 730, 742, 957, 993; 1996, c. 747; 1998, cc. 551, 581; 1999, cc. 637, 740; 2001, c. 778; 2002, c. 747; 2005, c. 723; 2006, cc. 701, 764; 2014, c. 129; 2016, c. 632.

**§ 63.2-1720. (Effective July 1, 2017) Assisted living facilities and adult day care centers; employment for compensation of persons or use of volunteers convicted of certain offenses prohibited; background check required; penalty**

A. No assisted living facility, adult day care center, child-placing agency, independent foster home, or family day system licensed in accordance with the provisions of this chapter, or registered family day homes or family day homes approved by family day systems, shall hire for compensated employment or continue to employ persons who have an offense as defined in § 63.2-1719. All applicants for employment shall undergo background checks pursuant to subsection C.

B. A licensed assisted living facility or adult day care center may hire an applicant convicted of one misdemeanor barrier crime not involving abuse or neglect, if five years have elapsed following the conviction.

C. Background checks pursuant to subsection A require:

1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and, in the case of licensed child-placing agencies, independent foster homes, and family day systems, registered family day homes, and family day homes approved by family day systems, whether or not the person has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. A criminal history records check through the Central Criminal Records Exchange pursuant to § 19.2-389; and

3. In the case of licensed child-placing agencies, independent foster homes, and family day systems, registered family day homes, and family day homes approved by family day systems, a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

D. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision C 1 is guilty of a Class 1 misdemeanor.

E. A licensed assisted living facility, licensed adult day care center, licensed child-placing agency, licensed independent foster home, licensed family day system, registered family day home, or family day home approved by a family day system shall obtain for any compensated employees within 30 days of employment (i) an original criminal record clearance with respect to convictions for offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange and (ii) in the case of licensed child-placing agencies, independent foster homes, and family day systems, registered family day homes, and family day homes approved by family day systems, a copy of the information from the central registry for any compensated employee within 30 days of employment. However, no employee shall be permitted to work in a position that involves direct contact with a person or child receiving services until an original criminal record clearance or original criminal history record has been received, unless such person works under the direct supervision of another employee for whom a background check has been completed in accordance with the requirements of this section. If an applicant is denied employment because of information from the central registry or convictions appearing on his criminal history record, the licensed assisted living facility, adult day care center, child-placing agency, independent foster home, or family day system, registered family day home, or family day home approved by a family day system shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

F. No volunteer who has an offense as defined in § 63.2-1719 shall be permitted to serve in a licensed child-placing agency, independent foster home, or family day system, registered family day home, or family day home approved by a family day system. Any person desiring to volunteer at a licensed child-placing agency, independent foster home, or family day system, registered family day home, or family day home approved by a family day system shall provide the agency, system, or home with a sworn statement or affirmation pursuant to subdivision C 1. Such licensed child-placing agency, independent foster home, or family day system, registered family day home, or family day home approved by a family day system shall obtain for any volunteers, within 30 days of commencement of volunteer service, a copy of (i) the information from the central registry and (ii) an original criminal record clearance with respect to offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision C 1 is guilty of a Class 1 misdemeanor. If a volunteer is denied service because of information from the central registry or convictions appearing on his criminal history record, such licensed child-placing agency, independent foster home, or family day system, registered family day home, or family day home approved by a family day system shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the volunteer. The provisions of this subsection shall apply only to volunteers who will be alone with

any child in the performance of their duties and shall not apply to a parent-volunteer of a child attending a licensed child-placing agency, independent foster home, or family day system, registered family day home, or family day home approved by a family day system, whether or not such parent-volunteer will be alone with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children that includes the parent-volunteer's own child in a program that operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section.

G. No volunteer shall be permitted to serve in a licensed assisted living facility or licensed adult day care center without the permission or under the supervision of a person who has received a clearance pursuant to this section.

H. Further dissemination of the background check information is prohibited other than to the Commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

I. A licensed assisted living facility shall notify and provide all students a copy of the provisions of this article prior to or upon enrollment in a certified nurse aide program operated by such assisted living facility.

J. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

1985, c. 360, § 63.1-198.1; 1986, cc. 300, 627; 1987, cc. 130, 131, 692, 693; 1992, cc. 746, 844, §§ 63.1-173.2, 63.1-194.13; 1993, cc. 17, 657, 730, 742, 957, 993; 1996, c. 747; 1998, cc. 551, 581; 1999, cc. 637, 740; 2001, c. 778; 2002, c. 747; 2005, c. 723; 2006, cc. 701, 764; 2014, c. 129; 2015, cc. 758, 770; 2016, c. 632.

**§ 63.2-1720.1. (Effective July 1, 2017) Licensed child day centers and licensed family day homes; employment for compensation or use as volunteers of persons convicted of or found to have committed certain offenses prohibited; national background check required; pe**

A. No child day center or family day home licensed in accordance with the provisions of this chapter shall hire for compensated employment, continue to employ, or permit to serve as a volunteer in a position that is involved in the day-to-day operations of the child day center or family day home or in which the employee or volunteer will be alone with, in control of, or supervising children any person who has an offense as defined in § 63.2-1719. All applicants for employment or to serve as volunteers shall undergo a background check in accordance with subsection B.

B. Any applicant required to undergo a background check in accordance with subsection A shall:

1. Provide a sworn statement or affirmation disclosing whether he has ever been convicted of or is the subject of pending charges for any offense within or outside the Commonwealth and whether he has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. Submit to fingerprinting and provide personal descriptive information described in subdivision B 2 of § 19.2-392.02; and

3. Authorize the child day center or family day home to obtain a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him.

The applicant's fingerprints and personal descriptive information obtained pursuant to subdivision 2 shall be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal history record information regarding such applicant. Upon receipt of an applicant's record or notification that no record exists, the Central Criminal Records Exchange shall forward the information to the Department, and the Department shall report to the child day center or family day home whether the applicant is eligible to have responsibility for the safety and well-being of children. In cases in which the record forwarded to the Department is lacking disposition data, the Department shall conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data before reporting to the child day center or family day home.

C. The child day center or family day home shall inform every applicant for compensated employment or to serve as a volunteer required to undergo a background check pursuant to this section that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made of the applicant's eligibility to have responsibility for the safety and well-being of children.

D. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor.

E. Further dissemination of the background check information is prohibited other than to the Commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

F. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

G. Notwithstanding the provisions of subsection A, a child day center may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under

§ 18.2-57 if 10 years have elapsed following the conviction, unless the person committed such offense while employed in a child day center or the object of the offense was a minor.

H. Fees charged for the processing and administration of background checks pursuant to this section shall not exceed the actual cost to the state of such processing and administration.

I. Any person employed for compensation at a licensed child day center or family day home or permitted to serve as a volunteer at a licensed child day center or family day home in a position that is involved in the day-to-day operations of the child day center or family day home or in which he will be alone with, in control of, or supervising children who is (i) convicted of an offense as defined in § 63.2-1719 within or outside of the Commonwealth or (ii) found to be the subject of a founded complaint of child abuse or neglect within or outside of the Commonwealth shall notify the child day center or family day home of such conviction or finding.

2015, cc. 758, 770; 2016, c. 632.

**§ 63.2-1721. (Effective until July 1, 2017) Background check upon application for licensure or registration as child welfare agency; background check of foster or adoptive parents approved by child-placing agencies and family day homes approved by family day systems; penalty**

A. Upon application for licensure or registration as a child welfare agency, (i) all applicants; (ii) agents at the time of application who are or will be involved in the day-to-day operations of the child welfare agency or who are or will be alone with, in control of, or supervising one or more of the children; and (iii) any other adult living in the home of an applicant for licensure or registration as a family day home shall undergo a background check. Upon application for licensure as an assisted living facility, all applicants shall undergo a background check. In addition, foster or adoptive parents requesting approval by child-placing agencies and operators of family day homes requesting approval by family day systems, and any other adult residing in the family day home or existing employee or volunteer of the family day home, shall undergo background checks pursuant to subsection B prior to their approval.

B. Background checks pursuant to this section require:

1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and whether or not the person has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. A criminal history record check through the Central Criminal Records Exchange pursuant to § 19.2-389; and

3. In the case of child welfare agencies or adoptive or foster parents, a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

C. The character and reputation investigation pursuant to § 63.2-1702 shall include background checks pursuant to subsection B of persons specified in subsection A. The applicant shall submit the background check information required in subsection B to the Commissioner's representative prior to issuance of a license, registration or approval. The applicant shall provide an original criminal record clearance with respect to offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision B 1 shall be guilty of a Class 1 misdemeanor. If any person specified in subsection A required to have a background check has any offense as defined in § 63.2-1719, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to an exception in subsections E, F, G, or H (i) the Commissioner shall not issue a license or registration to a child welfare agency; (ii) the Commissioner shall not issue a license to an assisted living facility; (iii) a child-placing agency shall not approve an adoptive or foster home; or (iv) a family day system shall not approve a family day home.

D. No person specified in subsection A shall be involved in the day-to-day operations of a child welfare agency; be alone with, in control of, or supervising one or more children receiving services from a child welfare agency; or be permitted to work in a position that involves direct contact with a person receiving services without first having completed background checks pursuant to subsection B, unless such person is directly supervised by another person for whom a background check has been completed in accordance with the requirements of this section.

E. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of not more than one misdemeanor as set out in § 18.2-57 not involving abuse, neglect, moral turpitude, or a minor, provided 10 years have elapsed following the conviction.

F. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as a foster parent an applicant convicted of statutory burglary for breaking and entering a dwelling home or other structure with intent to commit larceny, who has had his civil rights restored by the Governor, provided 25 years have elapsed following the conviction.

G. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of felony possession of drugs, who has had his civil rights restored by the Governor, provided 10 years have elapsed following the conviction.

H. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of felony possession of drugs with intent to distribute who has had his civil rights restored by the Governor, provided 20 years have elapsed following the conviction.

I. If an applicant is denied licensure, registration or approval because of information from the central registry or convictions appearing on his criminal history record, the Commissioner shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

J. Further dissemination of the background check information is prohibited other than to the Commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

K. The provisions of this section referring to a sworn statement or affirmation and to prohibitions on the issuance of a license for any offense shall not apply to any children's residential facility licensed pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements contained in § 63.2-1726.

Code 1950, §§ 63-235, 63-236; 1968, cc. 578, 585, §§ 63.1-198, 63.1-199; 1975, c. 439; 1985, c. 360, § 63.1-198.1; 1986, cc. 300, 627; 1987, cc. 130, 131, 692, 693; 1992, c. 746; 1993, cc. 730, 742; 1995, c. 401; 1996, c. 747; 1997, c. 427; 1998, cc. 551, 581; 1999, c. 740; 2001, c. 778; 2002, c. 747; 2004, c. 714; 2005, cc. 610, 722, 924; 2006, c. 885; 2014, c. 129; 2015, c. 364.

**§ 63.2-1721. (Effective July 1, 2017) Background check upon application for licensure as a child-placing agency, etc.; penalty**

A. Upon application for licensure as a child-placing agency, independent foster home, or family day system or registration as a family day home, (i) all applicants; (ii) agents at the time of application who are or will be involved in the day-to-day operations of the child-placing agency, independent foster home, family day system, or family day home or who are or will be alone with, in control of, or supervising one or more of the children; and (iii) any other adult living in the home of an applicant for registration as a family day home shall undergo a background check pursuant to subsection B. Upon application for licensure as an assisted living facility, all applicants shall undergo a background check pursuant to subsection B. In addition, foster or adoptive parents requesting approval by child-placing agencies and operators of family day homes requesting approval by family day systems, and any other adult residing in the family day home or existing employee or volunteer of the family day home, shall undergo background checks pursuant to subsection B prior to their approval.

B. Background checks pursuant to subsection A require:

1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and whether or not the person has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. A criminal history records check through the Central Criminal Records Exchange pursuant to § 19.2-389; and

3. In the case of child-placing agencies, independent foster homes, family day systems, and family day homes, or adoptive or foster parents, a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

C. The person required to have a background check pursuant to subsection A shall submit the background check information required in subsection B to the Commissioner's representative prior to issuance of a license, registration or approval. The applicant shall provide an original criminal record clearance with respect to offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor. If any person specified in subsection A required to have a background check has any offense as defined in § 63.2-1719, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to an exception in subsection E, F, G, or H, (i) the Commissioner shall not issue a license to a child-placing agency, independent foster home, or family day system or a registration to a family day home; (ii) the Commissioner shall not issue a license to an assisted living facility; (iii) a child-placing agency shall not approve an adoptive or foster home; or (iv) a family day system shall not approve a family day home.

D. No person specified in subsection A shall be involved in the day-to-day operations of a licensed child-placing agency, independent foster home, or family day system or a registered family day home; be alone with, in control of, or supervising one or more children receiving services from a licensed child-placing agency, independent foster home, or family day system or a registered family day home; or be permitted to work in a position that involves direct contact with a person receiving services without first having completed background checks pursuant to subsection B unless such person is directly supervised by another person for whom a background check has been completed in accordance with the requirements of this section.

E. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of not more than one misdemeanor as set out in § 18.2-57 not involving abuse, neglect, moral turpitude, or a minor, provided that 10 years have elapsed following the conviction.

F. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as a foster parent an applicant convicted of statutory burglary for breaking and entering a dwelling home or other structure with intent to commit larceny, who has had his civil rights restored by the Governor, provided that 25 years have elapsed following the conviction.

G. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of felony possession of drugs, who has had his civil rights restored by the Governor, provided that 10 years have elapsed following the conviction.

H. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of felony possession of drugs with intent to distribute who has had his civil rights restored by the Governor, provided 20 years have elapsed following the conviction.

I. If an applicant is denied licensure, registration or approval because of information from the central registry or convictions appearing on his criminal history record, the Commissioner shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

J. Further dissemination of the background check information is prohibited other than to the Commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

Code 1950, §§ 63-235, 63-236; 1968, cc. 578, 585, §§ 63.1-198, 63.1-199; 1975, c. 439; 1985, c. 360, § 63.1-198.1; 1986, cc. 300, 627; 1987, cc. 130, 131, 692, 693; 1992, c. 746; 1993, cc. 730, 742; 1995, c. 401; 1996, c. 747; 1997, c. 427; 1998, cc. 551, 581; 1999, c. 740; 2001, c. 778; 2002, c. 747; 2004, c. 714; 2005, cc. 610, 722, 924; 2006, c. 885; 2014, c. 129; 2015, cc. 364, 758, 770.

**§ 63.2-1721.1. (Effective July 1, 2017) Background check upon application for licensure as child day center or family day home; penalty**

A. Every (i) applicant for licensure as a child day center or family day home; (ii) agent of an applicant for licensure as a child day center or family day home at the time of application who is or will be involved in the day-to-day operations of the child day center or family day home or who is or will be alone with, in control of, or supervising one or more of the children; and (iii) adult living in the family day home shall undergo a background check in accordance with subsection B prior to issuance of a license as a child day center or family day home.

B. Every person required to undergo a background check pursuant to subsection A shall:

1. Provide a sworn statement or affirmation disclosing whether he has ever been convicted of or is the subject of any pending criminal charges for any offense within or outside the Commonwealth and whether or not he has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. Submit to fingerprinting and provide personal descriptive information described in subdivision B 2 of § 19.2-392.02; and

3. Authorize the Department to obtain a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him.

Fingerprints and personal descriptive information obtained pursuant to subdivision 2 shall be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal history record information regarding the individual. Upon receipt of an applicant's record or notification that no record exists, the Central Criminal

Records Exchange shall forward the information to the Department. In cases in which the record forwarded to the Department is lacking disposition data, the Department shall conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data.

C. If any person specified in subsection A required to have a background check has an offense as defined in § 63.2-1719, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723, no license as a child day center or family day home shall be granted.

D. Information from a search of the central registry maintained pursuant to § 63.2-1515, authorized in accordance with subdivision B 3, shall be obtained prior to issuance of a license as a child day center or family day home.

E. No person specified in subsection A shall be involved in the day-to-day operations of the child day center or family day home, or shall be alone with, in control of, or supervising one or more children without first having completed any required background check pursuant to subsection B.

F. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor.

G. If an applicant is denied licensure because of information from the central registry or convictions appearing on his criminal history record, the Commissioner shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

H. Further dissemination of the background check information is prohibited other than to the Commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

I. Fees charged for the processing and administration of background checks pursuant to this section shall not exceed the actual cost to the state of such processing and administration.

2015, cc. 758, 770.

**§ 63.2-1722. Revocation or denial of renewal based on background checks; failure to obtain background check**

A. The Commissioner may revoke or deny renewal of a license or registration of a child welfare agency, assisted living facility, or adult day care center; a child-placing agency may revoke the approval of a foster home; and a family day system may revoke the approval of a family day home if the assisted living facility, adult day care center, child welfare agency, foster home, or approved family day home has knowledge that a person specified in § 63.2-1720, 63.2-1720.1, 63.2-1721, or 63.2-1721.1 required to have a background check has an offense as defined in § 63.2-1719, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to the exceptions in subsection B of § 63.2-1720, subsection G of § 63.2-1720.1, or subsection E, F, or G of § 63.2-1721.1, and the facility, center, or agency refuses to separate such person from employment or service.

B. Failure to obtain background checks pursuant to §§ 63.2-1720, 63.2-1720.1, 63.2-1721, and 63.2-1721.1 shall be grounds for denial or revocation of a license, registration, or approval. No violation shall occur if the assisted living facility, adult day care center, child-placing agency, independent foster home, family day system, family day home, or child day center has applied for the background check timely and it has not been obtained due to administrative delay. The provisions of this section shall be enforced by the Department.

Code 1950, § 63-235; 1968, cc. 578, § 63.1-198, 585; 1975, c. 439; 1985, c. 360; 1992, c. 746; 1993, cc. 730, 742; 1995, c. 401; 1996, c. 747; 1997, c. 427; 1998, cc. 551, 581; 2002, c. 747; 2015, cc. 758, 770.

**§ 63.2-1723. Child welfare agencies; criminal conviction and waiver**

A. Any person who seeks to operate, volunteer or work at a child welfare agency and who is disqualified because of a criminal conviction or a criminal conviction in the background check of any other adult living in a family day home regulated by the Department, pursuant to §§ 63.2-1720, 63.2-1720.1, 63.2-1721, 63.2-1721.1, and 63.2-1724, may apply in writing for a waiver from the Commissioner. The Commissioner may grant a waiver if the Commissioner determines that (i) the person is of good moral character and reputation and (ii) the waiver would not adversely affect the safety and well-being of children in the person's care. The Commissioner shall not grant a waiver to any person who has been convicted of a barrier crime as defined in § 63.2-1719. However, the Commissioner may grant a waiver to a family day home licensed or registered by the Department if any other adult living in the home of the applicant or provider has been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, provided that (a) five years have elapsed following the conviction and (b) the Department has conducted a home study that includes, but is not limited to, (1) an assessment of the safety of children placed in the home and (2) a determination that the offender is now a person of good moral character and reputation. The waiver shall not be granted if the adult living in the home is an assistant or substitute provider or if such adult has been convicted of a misdemeanor offense under both §§ 18.2-57 and 18.2-57.2. Any waiver granted under this section shall be available for inspection by the public. The child welfare agency shall notify in writing every parent and guardian of the children in its care of any waiver granted for its operators, employees or volunteers.

B. The Board shall adopt regulations to implement the provisions of this section.

1998, cc. 551, 581, § 63.1-198.4; 2001, c. 867; 2002, c. 747; 2015, cc. 758, 770.

**§ 63.2-1724. Records check by unlicensed child day center; penalty**

Any child day center that is exempt from licensure pursuant to § 63.2-1716 shall require a prospective employee or volunteer or any other person who is expected to be alone with one or more children enrolled in the child day center to obtain within 30 days of employment or commencement of volunteer service, a search of the central registry maintained pursuant to § 63.2-1515 on any founded complaint of child abuse or neglect and a criminal records check as provided in subdivision A 11 of § 19.2-389. However, no employee shall be permitted to work in a position

that involves direct contact with a child until an original criminal record clearance or original criminal history record has been received, unless such person works under the direct supervision of another employee for whom a background check has been completed in accordance with the requirements of this section. A child day center that is exempt from licensure pursuant to § 63.2-1716 shall refuse employment or service to any person who has any offense defined in § 63.2-1719. Such center shall also require a prospective employee or volunteer or any other person who is expected to be alone with one or more children in the child day center to provide a sworn statement or affirmation disclosing whether or not the applicant has ever been (i) the subject of a founded complaint of child abuse or neglect, or (ii) convicted of a crime or is the subject of pending criminal charges for any offense within the Commonwealth or any equivalent offense outside the Commonwealth. The foregoing provisions shall not apply to a parent or guardian who may be left alone with his or her own child. For purposes of this section, convictions shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would have been a felony if committed by an adult within or outside the Commonwealth. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor. If an applicant is denied employment or service because of information from the central registry or convictions appearing on his criminal history record, the child day center shall provide a copy of the information obtained from the central registry or Central Criminal Records Exchange or both to the applicant. Further dissemination of the information provided to the facility is prohibited.

The provisions of this section referring to volunteers shall apply only to volunteers who will be alone with any child in the performance of their duties and shall not apply to a parent-volunteer of a child attending the child day center whether or not such parent-volunteer will be alone with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children which includes the parent-volunteer's own child, in a program which operates no more than four hours per day, where the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section.

1985, c. 360, § 63.1-198.2; 1987, cc. 130, 692, 693; 1993, cc. 730, 742; 1998, cc. 551, 581; 2000, cc. 210, 248; 2002, c. 747; 2003, c. 467; 2014, c. 129.

**§ 63.2-1725. Child day centers or family day homes receiving federal, state, or local child care funds; eligibility requirements**

A. Whenever any child day center or family day home that has not met the requirements of §§ 63.2-1720, 63.2-1721, and 63.2-1724 applies to enter into a contract with the Department or a local department to provide child care services to clients of the Department or local department, the Department or local department shall require a criminal records check pursuant to subdivision A 43 of § 19.2-389, as well as a search of the central registry maintained pursuant to § 63.2-1515, on any child abuse or neglect investigation, of the applicant; any employee; prospective employee; volunteers; agents involved in the day-to-day operation; all agents who are alone with, in control

of, or supervising one or more of the children; and any other adult living in a family day home. The applicant shall provide the Department or local department with copies of these records checks. The child day center or family day home shall not be permitted to enter into a contract with the Department or a local department for child care services when an applicant; any employee; a prospective employee; a volunteer, an agent involved in the day-to-day operation; an agent alone with, in control of, or supervising one or more children; or any other adult living in a family day home has any offense as defined in § 63.2-1719. The child day center or family day home shall also require the above individuals to provide a sworn statement or affirmation disclosing whether or not the person has ever been (i) the subject of a founded case of child abuse or neglect or (ii) convicted of a crime or is the subject of any pending criminal charges within the Commonwealth or any equivalent offense outside the Commonwealth. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor. If a person is denied employment or work because of information from the central registry or convictions appearing on his criminal history record, the child day center or family day program shall provide a copy of such information obtained from the central registry or Central Criminal Records Exchange or both to the person. Further dissemination of the information provided to the facility, beyond dissemination to the Department, agents of the Department, or the local department, is prohibited.

B. Every child day center or family day home that enters into a contract with the Department or a local department to provide child care services to clients of the Department or local departments that is funded, in whole or in part, by the Child Care and Development Block Grant, shall comply with all requirements established by federal law and regulations.

1999, c. 727, § 63.1-198.5; 2002, c. 747; 2013, c. 261; 2015, cc. 758, 770.

**§ 63.2-1726. Background check required; children's residential facilities**

A. As a condition of employment, volunteering, or providing services on a regular basis, every children's residential facility that is regulated or operated by the Departments of Social Services, Education, Military Affairs, or Behavioral Health and Developmental Services shall require any individual who (i) accepts a position of employment at such a facility who was not employed by that facility prior to July 1, 2007, (ii) volunteers for such a facility on a regular basis and will be alone with a juvenile in the performance of his duties who was not a volunteer at such facility prior to July 1, 2007, or (iii) provides contractual services directly to a juvenile for such facility on a regular basis and will be alone with a juvenile in the performance of his duties who did not provide such services prior to July 1, 2007, to submit to fingerprinting and to provide personal descriptive information, to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant. The children's residential facility shall inform the applicant that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution

before a final determination is made of the applicant's eligibility to have responsibility for the safety and well-being of children. The applicant shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been convicted of or is the subject of pending charges for any offense within or outside the Commonwealth. The results of the criminal history background check must be received prior to permitting an applicant to work with children.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall forward it to the state agency which operates or regulates the children's residential facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant's record lacking disposition data, conduct research in whatever state and local record-keeping systems are available in order to obtain complete data. The state agency shall report to the children's facility whether the applicant is eligible to have responsibility for the safety and well-being of children. Except as otherwise provided in subsection B, no children's residential facility regulated or operated by the Departments of Education, Behavioral Health and Developmental Services, Military Affairs, or Social Services shall hire for compensated employment or allow to volunteer or provide contractual services persons who have been (a) convicted of or are the subject of pending charges for the following crimes: a felony violation of a protective order as set out in § 16.1-253.2; murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in § 18.2-41; abduction as set out in subsection A or B of § 18.2-47; abduction for immoral purposes as set out in § 18.2-48; assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery as set out in § 18.2-58; carjacking as set out in § 18.2-58.1; extortion by threat as set out in § 18.2-59; threat as set out in § 18.2-60; any felony stalking violation as set out in § 18.2-60.3; a felony violation of a protective order as set out in § 18.2-60.4; sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation relating to distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as set out in § 18.2-289; aggressive use of a machine gun as set out in § 18.2-290; use of a sawed off shotgun in a crime of violence as set out in subsection A of § 18.2-300; pandering as set out in § 18.2-355; crimes against nature involving children as set out in § 18.2-361; taking indecent liberties with children as set out in § 18.2-370 or 18.2-370.1; abuse or neglect of children as set out in § 18.2-371.1, including failure to secure medical attention for an injured child as set out in § 18.2-314; obscenity offenses as set out in § 18.2-374.1; possession of child pornography as set out in § 18.2-374.1:1; electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in § 18.2-366; abuse or neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-

203; or an equivalent offense in another state; (b) convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an equivalent offense in another state, in the five years prior to the application date for employment, to be a volunteer, or to provide contractual services; (c) convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and continue on probation or parole or have failed to pay required court costs; or (d) convicted of any offense set forth in § 9.1-902 or have been the subject of a finding of not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, or any similar registry in any other state. The provisions of this section also shall apply to residential programs established pursuant to § 16.1-309.3 for juvenile offenders cited in a complaint for intake or in a petition before the court that alleges the juvenile is delinquent or in need of services or supervision, and to local secure detention facilities provided, however, that the provisions of this section related to local secure detention facilities shall only apply to an individual who, on or after July 1, 2013, accepts a position of employment at such local secure detention facility, volunteers at such local secure detention facility on a regular basis and will be alone with a juvenile in the performance of his duties, or provides contractual services directly to a juvenile at a local secure detention facility on a regular basis and will be alone with a juvenile in the performance of his duties. The Central Criminal Records Exchange and the state or local agency that regulates or operates the local secure detention facility shall process the criminal history record information regarding such applicant in accordance with this subsection and subsection B.

B. Notwithstanding the provisions of subsection A, a children's residential facility may hire for compensated employment or for volunteer or contractual service purposes persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed such offense in the scope of his employment, volunteer, or contractual services.

If the applicant is denied employment or the opportunity to volunteer or provide services at a children's residential facility because of information appearing on his criminal history record, and the applicant disputes the information upon which the denial was based, upon written request of the applicant the state agency shall furnish the applicant the procedures for obtaining his criminal history record from the Federal Bureau of Investigation. If the applicant has been permitted to assume duties that do not involve contact with children pending receipt of the report, the children's residential facility is not precluded from suspending the applicant from his position pending a final determination of the applicant's eligibility to have responsibility for the safety and well-being of children. The information provided to the children's residential facility shall not be disseminated except as provided in this section.

C. Those individuals listed in clauses (i), (ii) and (iii) of subsection A also shall authorize the children's residential facility to obtain a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The applicant shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been the subject of a founded case of child abuse or neglect within or outside the Commonwealth. The children's residential facility shall receive the results of the central registry search prior to permitting an applicant to work alone with children. Children's residential facilities regulated or operated by the Departments of Education; Behavioral Health and Developmental Services; Military Affairs; and Social Services shall not hire for compensated employment or allow to volunteer or provide contractual services, persons who have a founded case of child abuse or neglect. Every residential facility for juveniles which is regulated or operated by the Department of Juvenile Justice shall be authorized to obtain a copy of the information from the central registry.

D. The Boards of Social Services; Education; Juvenile Justice; and Behavioral Health and Developmental Services, and the Department of Military Affairs, may adopt regulations to comply with the provisions of this section. Copies of any information received by a children's residential facility pursuant to this section shall be available to the agency that regulates or operates such facility but shall not be disseminated further. The cost of obtaining the criminal history record and the central registry information shall be borne by the employee or volunteer unless the children's residential facility, at its option, decides to pay the cost.

1994, c. 704, § 63.1-248.7:2; 1996, c. 747; 2001, c. 138; 2002, c. 747; 2007, c. 573; 2009, cc. 813, 840; 2012, c. 383; 2013, cc. 96, 181; 2016, c. 580.

### § 63.2-1727. Sex offender or child abuser prohibited from operating or residing in family day home; penalty

It shall be unlawful for any person to operate a family day home if he, or if he knows that any other person who resides in, is employed by, or volunteers in the home, has been convicted of a felony in violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-355, 18.2-361, 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-371.1, or 18.2-374.1, has been convicted of any offense that requires registration on the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-902, or is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. A violation of this section is punishable as a Class 1 misdemeanor.

1994, c. 126, § 63.1-198.3; 1998, cc. 551, 581; 2002, c. 747; 2006, cc. 796, 804; 2015, cc. 758, 770.

## Article 4 - COMPLAINTS RECEIVED FROM CONSUMERS AND THE PUBLIC

### § 63.2-1728. Establishment of toll-free telephone line for complaints; investigation on receipt of complaints

With such funds as are appropriated for this purpose, the Commissioner shall establish a toll-free telephone line to respond to complaints regarding operations of assisted living facilities, adult day care centers and child welfare agencies. Upon receipt of a complaint concerning the operation of an assisted living facility, adult day care center or child welfare agency, regardless of whether the program is subject to licensure, the Commissioner shall, for good cause shown, cause an investigation to be made, including on-site visits as he deems necessary, of the activities, services, records and facilities. The assisted living facility, adult day care center or child welfare agency shall afford the Commissioner reasonable opportunity to inspect all of the operator's activities, services, records and facilities and to interview its agents and employees and any child or other person within its custody or control. Whenever an assisted living facility, adult day care center or child welfare agency subject to inspection under this section is determined by the Commissioner to be in noncompliance with the provisions of this subtitle or with regulations adopted pursuant to this subtitle, the Commissioner shall give reasonable notice to the assisted living facility, adult day care center or child welfare agency of the nature of its noncompliance and may thereafter take appropriate action as provided by law, including a suit to enjoin the operation of the assisted living facility, adult day care center or child welfare agency.

An incident report filed by an assisted living facility, pursuant to regulations adopted by the Board, for any major incident that negatively affects or threatens the life, health, safety, or welfare of any resident of the facility shall not be considered a complaint for purposes of this section and shall not be posted by the Department on a website maintained by the Department. However, upon receipt of an incident report for any major incident that negatively affects or threatens the life, health, safety, or welfare of any resident of an assisted living facility, the Commissioner may initiate an investigation including an on-site visit to the facility if the Commissioner finds, for good cause shown based upon the seriousness of the incident and the nature of any response to the incident, including any implementation of a plan of correction to address the situation giving rise to the incident, that an investigation is required to protect the life, health, safety, or welfare of a resident of the assisted living facility.

1993, cc. 730, 742, § 63.1-198.03; 2002, c. 747; 2010, c. 603.

**§ 63.2-1729. Confidentiality of complainant's identity**

Whenever the Department conducts inspections and investigations in response to complaints received from the public, the identity of the complainant and the identity of any resident, participant or child who is the subject of the complaint, or identified therein, shall be confidential and shall not be open to inspection by members of the public. Identities of the complainant and resident, participant or child who is the subject of the complaint shall be revealed only if a court order so requires. Nothing contained herein shall prevent the Department, in its discretion, from disclosing to the assisted living facility, adult day care center or child welfare agency the nature of the complaint or the identity of the resident, participant or child who is the subject of the complaint. Nothing contained herein shall prevent the Department or its employees from making

reports under Chapter 15 (§ 63.2-1500 et seq.) of this title or Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of this title. If the Department intends to rely, in whole or in part, on any statements made by the complainant, at any administrative hearing brought against the assisted living facility, adult day care center or child welfare agency, the Department shall disclose the identity of the complainant to the assisted living facility, adult day care center or child welfare agency a reasonable time in advance of such hearing.

1994, c. 941, § 63.1-177.2; 2002, c. 747.

**§ 63.2-1730. Retaliation or discrimination against complainants**

No assisted living facility, adult day care center or child welfare agency may retaliate or discriminate in any manner against any person who (i) in good faith complains or provides information to, or otherwise cooperates with, the Department or any other agency of government or any person or entity operating under contract with an agency of government, having responsibility for protecting the rights of residents of assisted living facilities, participants in adult day care centers or children in child welfare agencies, (ii) attempts to assert any right protected by state or federal law, or (iii) assists any person in asserting such right.

1994, c. 941, § 63.1-177.1; 2002, c. 747.

**§ 63.2-1731. Retaliation against reports of child or adult abuse or neglect**

No assisted living facility, adult day care center or child welfare agency may retaliate in any manner against any person who in good faith reports adult or child abuse or neglect pursuant to Chapter 15 (§ 63.2-1500 et seq.) of this title or Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of this title.

1996, c. 487, § 63.1-198.03:1; 2002, c. 747.

## Article 5 - REGULATIONS AND INTERDEPARTMENTAL COOPERATION

**§ 63.2-1732. Regulations for assisted living facilities**

A. The Board shall have the authority to adopt and enforce regulations to carry out the provisions of this subtitle and to protect the health, safety, welfare and individual rights of residents of assisted living facilities and to promote their highest level of functioning. Such regulations shall take into consideration cost constraints of smaller operations in complying with such regulations and shall provide a procedure whereby a licensee or applicant may request, and the Commissioner may grant, an allowable variance to a regulation pursuant to § 63.2-1703.

B. Regulations shall include standards for staff qualifications and training; facility design, functional design and equipment; services to be provided to residents; administration of medicine; allowable medical conditions for which care can be provided; and medical procedures to be followed by staff, including provisions for physicians' services, restorative care, and specialized rehabilitative services. The Board shall adopt regulations on qualifications and training for employees of an assisted living facility in a direct care position. "Direct care position" means supervisors,

assistants, aides, or other employees of a facility who assist residents in their daily living activities.

C. Regulations for a Medication Management Plan in a licensed assisted living facility shall be developed by the Board, in consultation with the Board of Nursing and the Board of Pharmacy. Such regulations shall (i) establish the elements to be contained within a Medication Management Plan, including a demonstrated understanding of the responsibilities associated with medication management by the facility; standard operating and record-keeping procedures; staff qualifications, training and supervision; documentation of daily medication administration; and internal monitoring of plan conformance by the facility; (ii) include a requirement that each assisted living facility shall establish and maintain a written Medication Management Plan that has been approved by the Department; and (iii) provide that a facility's failure to conform to any approved Medication Management Plan shall be subject to the sanctions set forth in § 63.2-1709 or 63.2-1709.2.

D. Regulations shall require all licensed assisted living facilities with six or more residents to be able to connect by July 1, 2007, to a temporary emergency electrical power source for the provision of electricity during an interruption of the normal electric power supply. The installation shall be in compliance with the Uniform Statewide Building Code.

E. Regulations for medical procedures in assisted living facilities shall be developed in consultation with the State Board of Health and adopted by the Board, and compliance with these regulations shall be determined by Department of Health or Department inspectors as provided by an interagency agreement between the Department and the Department of Health.

F. In developing regulations to determine the number of assisted living facilities for which an assisted living facility administrator may serve as administrator of record, the Board shall consider (i) the number of residents in each of the facilities, (ii) the travel time between each of the facilities, and (iii) the qualifications of the on-site manager under the supervision of the administrator of record.

G. Regulations shall require that each assisted living facility register with the Department of State Police to receive notice of the registration or reregistration of any sex offender within the same or a contiguous zip code area in which the facility is located, pursuant to § 9.1-914.

H. Regulations shall require that each assisted living facility ascertain, prior to admission, whether a potential resident is a registered sex offender, if the facility anticipates the potential resident will have a length of stay greater than three days or in fact stays longer than three days.

Code 1950, § 63-223; 1954, c. 259; 1968, c. 578, § 63.1-174; 1973, c. 227; 1991, c. 532; 1993, cc. 957, 993; 1995, c. 649; 1997, c. 397; 2000, cc. 804, 808, 845; 2001, c. 161; 2002, c. 747; 2004, c. 673; 2005, cc. 610, 924; 2007, cc. 119, 164.

**§ 63.2-1733. Regulations for adult day care centers**

A. The Board shall have the authority to adopt and enforce regulations to carry out the provisions of this subtitle and to protect the health, safety, welfare, and individual rights of participants of adult day care centers and to promote their highest level of functioning.

B. Regulations shall include standards for care and services to be provided to participants; administration of medication; staffing; staff qualifications and training; and facility design, construction, and equipment.

1992, c. 356, § 63.1-194.2; 2002, c. 747.

**§ 63.2-1734. Regulations for child welfare agencies**

A. The Board shall adopt regulations for the activities, services and facilities to be employed by persons and agencies required to be licensed under this subtitle, which shall be designed to ensure that such activities, services and facilities are conducive to the welfare of the children under the custody or control of such persons or agencies.

Such regulations shall be developed in consultation with representatives of the affected entities and shall include, but need not be limited to, matters relating to the sex, age, and number of children and other persons to be maintained, cared for, or placed out, as the case may be, and to the buildings and premises to be used, and reasonable standards for the activities, services and facilities to be employed. Such limitations and standards shall be specified in each license and renewal thereof. Such regulations shall not require the adoption of a specific teaching approach or doctrine or require the membership, affiliation or accreditation services of any single private accreditation or certification agency.

Such regulations shall not prohibit child day programs providing care for school-age children at a location that is currently approved by the Department of Education or recognized as a private school by the State Board of Education for school occupancy and that houses a public or private school during the school year from permitting school-age children to use outdoor play equipment and areas approved for use by students of the school during school hours.

B. The Board shall adopt or amend regulations, policies and procedures related to child day care in collaboration with the Virginia Recreation and Park Society. No regulation adopted by the Board shall prohibit a child day center from hiring an armed security officer, licensed pursuant to Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1, to provide protection for children placed in the care of the child day center or employees of the center. The Board shall adopt or amend regulations related to therapeutic recreation programs in collaboration with the Virginia Park and Recreation Society and the Department of Behavioral Health and Developmental Services.

Code 1950, § 63-239; 1968, cc. 578, 585, § 63.1-202; 1970, c. 721; 1987, c. 698; 1993, cc. 730, 742; 1998, c. 237; 2002, cc. 298, 747; 2011, c. 139; 2012, cc. 803, 835; 2013, c. 416.

**§ 63.2-1735. Repealed**

Repealed by Acts 2012, cc. 803 and 835, cl. 76.

**§ 63.2-1736. Interagency agreements; cooperation of Department with other departments**

The Department is authorized to enter into interagency agreements with other state agencies to develop and implement regulations. Any state agency identified by the Department as appropriate to include in an interagency agreement shall participate in the development and implementation of the agreement. The Department shall assist and cooperate with other state departments in fulfilling their respective inspection responsibilities and in coordinating the regulations involving inspections. The Board may adopt regulations allowing the Department to so assist and cooperate with other state departments.

1991, c. 532, § 63.1-178.1; 1993, cc. 957, 993; 2002, c. 747.

**§ 63.2-1737. Licensure of group homes and residential facilities for children**

A. Notwithstanding any other provisions of this subtitle, the Department shall cooperate with other state departments in fulfilling their respective licensing and certification responsibilities of children's residential facilities. The Board shall adopt regulations establishing the Department as the single licensing agency for the regulation of children's residential facilities, including group homes, which provide social services programs, with the exception of educational programs licensed by the Department of Education and facilities regulated by the Department of Juvenile Justice. Notwithstanding any other provisions of this chapter, licenses issued to children's residential facilities may be issued for periods of up to 36 successive months.

B. The Board's regulations for the regulation of children's residential facilities shall address the services required to be provided in such facilities as it may deem appropriate to ensure the health and safety of the children. In addition, the Board's regulations shall include, but shall not be limited to (i) specifications for the structure and accommodations of such facilities according to the needs of the children; (ii) rules concerning allowable activities, local government- and facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.

C. Notwithstanding any other provisions of this chapter, any facility licensed by the Commissioner as a child-caring institution as of January 1, 1987, and that receives no public funds shall be licensed under minimum standards for licensed child-caring institutions as adopted by the Board and in effect on January 1, 1987. Effective January 1, 1987, all children's residential facilities shall be licensed under the regulations for children's residential facilities.

D. Pursuant to the procedures set forth in subsection E and in addition to the authority for other disciplinary actions provided in this title, the Commissioner may issue a summary order of suspension of the license of any group home or residential facility for children, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of

the children who are residents and the Commissioner believes the operation of the home or facility should be suspended during the pendency of such proceeding.

E. The summary order of suspension shall take effect upon its issuance and shall be served on the licensee or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to the address of record of the licensee. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the summary order of suspension and shall be convened by the Commissioner or his designee.

After such hearing, the Commissioner may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the Commissioner had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.

The willful and material failure to comply with the summary order of suspension or final order of summary suspension shall be punishable as a Class 2 misdemeanor. The Commissioner may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of children who are residents of a home or facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to such residents.

F. In addition to the requirements set forth in subsection B, the Board's regulations shall require, as a condition of initial licensure or, if appropriate, license renewal, that the applicant shall: (i) be personally interviewed by Department personnel to determine the qualifications of the owner or operator before granting an initial license; (ii) provide evidence of having relevant prior experience before any initial license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff participation in training on appropriate siting of the residential facilities for children, good neighbor policies, community relations, and shaken baby syndrome and its effects; and (iv) be required to screen residents prior to admission to exclude individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant residential facility.

G. In addition, the Department shall:

1. Notify relevant local governments and placing and funding agencies, including the Office of Children's Services, of multiple health and safety or human rights violations in residential facilities for which the Department serves as lead licensure agency when such violations result in the lowering of the licensure status of the facility to provisional;

2. Post on the Department's website information concerning the application for initial licensure of or renewal, denial, or provisional licensure of any residential facility for children located in the locality;

3. Require all licensees to self-report lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges that may have been made relating to the health and safety or human rights of residents;

4. Require proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's operational plan;

5. Disseminate to local governments, or post on the Department's website, an accurate (updated weekly or monthly as necessary) list of licensed and operating group homes and other residential facilities for children by locality with information on services and identification of the lead licensure agency; and

6. Modify the term of the license at any time during the term of the license based on a change in compliance.

1979, c. 218, § 63.1-196.4; 1984, c. 55; 1987, c. 578; 1992, c. 666; 2002, c. 747; 2005, cc. 358, 471; 2006, cc. 168, 781; 2008, c. 873; 2010, c. 551; 2015, c. 366.

**§ 63.2-1738. Program leaders and child-care supervisors at licensed child day centers; approved credential**

Program leaders and child-care supervisors employed by child day centers may possess an approved credential. For purposes of this section:

"Approved credential" means a competency-based credential awarded to individuals who work with children ages five and under in either a teaching, supervisory or administrative capacity and that is specifically awarded or administered by the National Association for the Education of Young Children; the National Academy of Early Childhood Programs; the Association of Christian Schools International; the American Association of Christian Schools; the National Early Childhood Program Accreditation; the National Accreditation Council for Early Childhood Professional Personnel and Programs; the International Academy for Private Education; the American Montessori Society; the International Accreditation and Certification of Childhood Educators, Programs, and Trainers; the National Accreditation Commission; the Virginia Community College System or other institution of higher learning; or its equivalent as determined by the Department.

"Program leader" or "child-care supervisor" means an individual designated to be responsible for the direct supervision of children and for the implementation of the activities and services for a group of children in a licensed child day center.

2002, c. 848, § 63.1-202.02; 2003, c. 467.

## Chapter 18 - FACILITIES AND PROGRAMS

## Article 1 - ASSISTED LIVING FACILITIES

### § 63.2-1800. Licensure requirements

A. Each license shall indicate whether the facility is licensed to provide residential living care or residential living and assisted living care.

B. Any facility licensed exclusively as an assisted living facility shall not use in its title the words "convalescent," "health," "hospital," "nursing," "sanatorium," or "sanitarium," nor shall such words be used to describe the facility in brochures, advertising, or other marketing material. No facility shall advertise or market a level of care that it is not licensed to provide. Nothing in this subsection shall prohibit the facility from describing services available in the facility.

C. Upon initial application for a license, any person applying to operate an assisted living facility who has not previously owned or managed or does not currently own or manage such a facility shall be required to undergo training by the Commissioner. The training programs shall focus on health and safety regulations and resident rights as they pertain to assisted living facilities and shall be completed by the owner or administrator prior to the granting of an initial license. Such training shall be required of those owners and currently employed administrators of an assisted living facility at the time of initial application for a license. The Commissioner may also approve training programs provided by other entities and allow owners or administrators to attend such approved training programs in lieu of training by the Commissioner. The Commissioner may also approve for licensure applicants who meet requisite experience criteria as established by the Board. The Commissioner may, at his discretion, issue a license conditioned upon the owner or administrator's completion of the required training.

D. For the purpose of facilitating the prompt restoration of electrical service and prioritization of customers during widespread power outages, the Commissioner shall notify on a quarterly basis all electric utilities serving customers in Virginia as to the location of all assisted living facilities licensed in the Commonwealth. The requirements of this subsection shall be met if the Commissioner maintains such information on an electronic database accessible by electric utilities serving customers in Virginia.

Code 1950, § 63-23.1; 1954, c. 259; 1968, c. 578, § 63.1-175; 1972, c. 540; 1973, c. 227; 1979, c. 461; 1981, c. 222; 1983, c. 153; 1991, c. 532; 1992, c. 666; 1993, cc. 957, 993; 1994, c. 686; 1999, c. 964; 2000, cc. 178, 203; 2002, c. 747; 2004, c. 304.

### § 63.2-1801. Access to assisted living facilities by community services boards and behavioral health authorities

All assisted living facilities shall provide reasonable access to staff or contractual agents of community services boards or behavioral health authorities as defined in § 37.2-100 for the purposes of (i) assessing or evaluating, (ii) providing case management or other services or assistance, or

(iii) monitoring the care of individuals receiving services who are residing in the facility. Such staff or contractual agents also shall be given reasonable access to other facility residents who have previously requested their services.

Code 1950, § 63-224; 1954, c. 259; 1968, c. 578, § 63.1-177; 1973, c. 227; 1979, c. 73; 1988, cc. 61, 151; 1991, c. 532; 1992, c. 666; 1993, cc. 957, 993; 1999, c. 964; 2000, c. 130; 2002, c. 747; 2005, c. 716; 2012, cc. 476, 507.

**§ 63.2-1802. Safe, secure environments for residents with serious cognitive impairments**

Assisted living facilities may provide safe, secure environments for residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia if they comply with the Board's regulations governing such placement. The Board's regulations shall define (i) serious cognitive impairment, which shall include, but not be limited to, an assessment by a clinical psychologist licensed to practice in the Commonwealth or by a physician and (ii) safe, secure environment. Prior to placing a resident with a serious cognitive impairment due to a primary psychiatric diagnosis of dementia in a safe, secure environment, an assisted living facility shall obtain the written approval of one of the following persons, in the specified order of priority: (a) the resident, if capable of making an informed decision; (b) a guardian or legal representative for the resident; however, such an appointment shall not be required in order that written approval may be obtained; (c) a relative authorized pursuant to the Board's regulations to act as the resident's representative; or (d) an independent physician who is skilled and knowledgeable in the diagnosis and treatment of dementia, if a guardian, legal representative or relative is unavailable. Such written approval shall be retained in the resident's file.

Code 1950, § 63-223; 1954, c. 259; 1968, c. 578, § 63.1-174; 1973, c. 227; 1991, c. 532; 1993, cc. 957, 993; 1995, c. 649; 1997, c. 397; 2000, cc. 804, 808, 845; 2001, c. 161; 2002, cc. 332, 747; 2003, c. 467.

**§ 63.2-1803. Staffing of assisted living facilities**

A. An administrator of an assisted living facility shall be licensed as an assisted living facility administrator by the Virginia Board of Long-Term Care Administrators pursuant to Chapter 31 (§ 54.1-3100 et seq.) of Title 54.1. However, an administrator of an assisted living facility licensed for residential living care only shall not be required to be licensed. Any person meeting the qualifications for a licensed nursing home administrator under § 54.1-3103 shall be deemed qualified to (i) serve as an administrator of an assisted living facility or (ii) serve as the administrator of both an assisted living facility and a licensed nursing home, provided the assisted living facility and licensed nursing home are part of the same building.

B. If a licensed assisted living facility administrator dies, resigns, is discharged, or becomes unable to perform his duties, the assisted living facility shall immediately employ a licensed administrator or appoint an acting administrator who is qualified by education for an approved administrator-in-training program and has a minimum of one year of administrative or supervisory experience in a health care or long-term care facility, or has completed such a program and is

awaiting licensure. The facility shall give immediate notice to the regional licensing office of the Department of Social Services and to the Board of Long-Term Care Administrators and shall provide the last date of employment of the licensed administrator. When an acting administrator is named, he shall notify the Department of his employment and, if intending to assume the position permanently, submit a completed application for an approved administrator-in-training program to the Board of Long-Term Care Administrators within 10 days of employment. An assisted living facility may be operated by an acting administrator for no more than 150 days, or not more than 90 days if the acting administrator has not applied for licensure, from the last date of employment of the licensed administrator.

C. The Department may grant an extension of up to 30 days in addition to the 150 days from the last date of employment of a licensed administrator if the acting administrator has applied for licensure as a long-term care administrator pursuant to Chapter 31 (§ 54.1-3100 et seq.) of Title 54.1, has completed the administrator-in-training program, and is awaiting the results of the national examination. If a 30-day extension is granted, the acting administrator shall immediately submit written notice to the Board of Long-Term Care Administrators. In no case shall an assisted living facility be operated with an acting administrator for more than 180 days, including the 30-day extension, from the last date of employment of a licensed administrator.

D. No assisted living facility shall operate under the supervision of an acting administrator pursuant to § 54.1-3103.1 and this section more than one time during any two-year period unless authorized to do so by the Department. Determinations regarding authorization to operate under the supervision of an acting administrator for more than one time in any two-year period shall be made by the Department on a case-by-case basis.

E. The assisted living facility shall have adequate, appropriate, and sufficient staff to provide services to attain and maintain (i) the physical, mental and psychosocial well-being of each resident as determined by resident assessments and individual plans of care and (ii) the physical safety of the residents on the premises. Upon admission and upon request, the assisted living facility shall provide in writing a description of the types of staff working in the facility and the services provided, including the hours such services are available.

Code 1950, §§ 63-222, 63-223; 1954, c. 259; 1968, c. 578, §§ 63.1-172, 63.1-174; 1972, c. 718; 1973, c. 227; 1975, c. 437; 1977, c. 105; 1985, cc. 17, 518; 1991, c. 532; 1992, c. 356; 1993, cc. 957, 993; 1994, c. 107; 1995, c. 649; 1997, c. 397; 1998, cc. 552, 850; 2000, cc. 804, 808, 845; 2001, c. 161; 2002, c. 747; 2003, c. 467; 2005, cc. 610, 924; 2011, c. 609.

**§ 63.2-1803.1. Assisted Living Facility Education, Training, and Technical Assistance Fund established**

There is hereby created in the state treasury a special nonreverting fund to be known as the Assisted Living Facility Education, Training, and Technical Assistance Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All penalties directed

to this fund by subdivision B 4 of § 63.2-1709.2 and all other funds from any public or private source directed to the Fund shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purpose of providing education and training for staff of and technical assistance to assisted living facilities to improve the quality of care in such facilities. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner.

2005, cc. 610, 924.

**§ 63.2-1804. Uniform assessment instrument**

A uniform assessment instrument setting forth a resident's care needs shall be completed for all residents upon admission and at subsequent intervals as determined by regulations promulgated by the Commissioner of the Department for Aging and Rehabilitative Services. No uniform assessment instrument shall be required to be completed upon admission if a uniform assessment instrument was completed by a case manager or other qualified assessor within ninety days prior to such admission to the assisted living facility unless there has been a change in the resident's condition within that time which would affect the admission. Uniform assessment instruments shall not be required to be completed more often than once every twelve months on individuals residing in assisted living facilities except that uniform assessment instruments shall be completed whenever there is a change in the resident's condition that appears to warrant a change in the resident's approved level of care. At the request of the assisted living facility, the resident's representative, the resident's physician, the Department or the local department, an independent assessment, using the uniform assessment instrument shall be completed to determine whether the resident's care needs are being met in the current placement. The resident's case manager or other qualified assessor shall complete the uniform assessment instrument for public pay residents or, upon request by the private pay resident, for private pay residents. Unless a private pay resident requests the uniform assessment instrument be completed by a case manager or other qualified assessor, qualified staff of the assisted living facility or an independent private physician may complete the uniform assessment instrument for private pay residents; however, for private pay residents, social and financial information which is not relevant because of the resident's payment status shall not be required. The cost of administering the uniform assessment instrument pursuant to this section shall be borne by the entity designated pursuant to regulations promulgated by the Commissioner of the Department for Aging and Rehabilitative Services. Upon receiving the uniform assessment instrument prior to admission of a resident, the assisted living facility administrator shall provide written assurance that the facility has the appropriate license to meet the care needs of the resident at the time of admission.

1993, cc. 957, 993, § 63.1-173.3; 1995, c. 649; 2002, c. 747; 2014, c. 284.

**§ 63.2-1805. Admissions and discharge; mandatory minimum liability insurance**

A. The Board shall adopt regulations:

1. Governing admissions to assisted living facilities;

2. Requiring that each assisted living facility prepare and provide a statement, in a format prescribed by the Department, to any prospective resident and his legal representative, if any, prior to admission and upon request, that discloses information, fully and accurately in plain language, about the (i) services; (ii) fees, including clear information about what services are included in the base fee and any fees for additional services; (iii) admission, transfer, and discharge criteria, including criteria for transfer to another level of care within the same facility or complex; (iv) general number and qualifications of staff on each shift; (v) range, frequency, and number of activities provided for residents; and (vi) ownership structure of the facility;

3. Establishing a process to ensure that each resident admitted or retained in an assisted living facility receives appropriate services and periodic independent reassessments and reassessments when there is a significant change in the resident's condition in order to determine whether a resident's needs can continue to be met by the facility and whether continued placement in the facility is in the best interests of the resident;

4. Governing appropriate discharge planning for residents whose care needs can no longer be met by the facility;

5. Addressing the involuntary discharge of residents;

6. Requiring that residents are informed of their rights pursuant to § 63.2-1808 at the time of admission;

7. Establishing a process to ensure that any resident temporarily detained in a facility pursuant to §§ 37.2-809 through 37.2-813 is accepted back in the assisted living facility if the resident is not involuntarily admitted pursuant to §§ 37.2-814 through 37.2-819;

8. Requiring that each assisted living facility train all employees who are mandated to report adult abuse, neglect, or exploitation pursuant to § 63.2-1606 on such reporting procedures and the consequences for failing to make a required report;

9. Requiring that each assisted living facility prepare and provide a statement, in a format prescribed by the Board, to any resident or prospective resident and his legal representative, if any, and upon request, that discloses whether the assisted living facility maintains liability insurance in force to compensate residents or other individuals for injuries and losses from the negligent acts of the facility, provided that no facility shall state that liability insurance is in place unless such insurance provides a minimum amount of coverage as established by the Board; and

10. Establishing the minimum amount of liability insurance coverage to be maintained by an assisted living facility for purposes of disclosure in accordance with subdivision 9.

B. If there are observed behaviors or patterns of behavior indicative of mental illness, intellectual disability, substance abuse, or behavioral disorders, as documented in the uniform assessment instrument completed pursuant to § 63.2-1804, the facility administrator or designated staff member shall ensure that an evaluation of the individual is or has been conducted by a qualified professional as defined in regulations. If the evaluation indicates a need for mental health, developmental, substance abuse, or behavioral disorder services, the facility shall provide (i) a notification of the resident's need for such services to the authorized contact person of record when available and (ii) a notification of the resident's need for such services to the community services board or behavioral health authority established pursuant to Title 37.2 that serves the city or county in which the facility is located, or other appropriate licensed provider. The Department shall not take adverse action against a facility that has demonstrated and documented a continual good faith effort to meet the requirements of this subsection.

C. The Department shall not order the removal of a resident from an assisted living facility if (i) the resident, the resident's family, the resident's physician, and the facility consent to the resident's continued stay in the assisted living facility and (ii) the facility is capable of providing, obtaining, or arranging for the provision of necessary services for the resident, including, but not limited to, home health care or hospice care.

D. Notwithstanding the provisions of subsection C, assisted living facilities shall not admit or retain an individual with any of the following conditions or care needs:

1. Ventilator dependency.

2. Dermal ulcers III and IV, except those stage III ulcers that are determined by an independent physician to be healing.

3. Intravenous therapy or injections directly into the vein except for intermittent intravenous therapy managed by a health care professional licensed in Virginia or as permitted in subsection E.

4. Airborne infectious disease in a communicable state that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold.

5. Psychotropic medications without appropriate diagnosis and treatment plans.

6. Nasogastric tubes.

7. Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube or as permitted in subsection E.

8. An imminent physical threat or danger to self or others is presented by the individual.

9. Continuous licensed nursing care (seven-days-a-week, 24-hours-a-day) is required by the individual.

10. Placement is no longer appropriate as certified by the individual's physician.

11. Maximum physical assistance is required by the individual as documented by the uniform assessment instrument and the individual meets Medicaid nursing facility level-of-care criteria as defined in the State Plan for Medical Assistance, unless the individual's independent physician determines otherwise. Maximum physical assistance means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument.

12. The assisted living facility determines that it cannot meet the individual's physical or mental health care needs.

13. Other medical and functional care needs that the Board determines cannot be met properly in an assisted living facility.

E. Except for auxiliary grant recipients, at the request of the resident in an assisted living facility and when his independent physician determines that it is appropriate, (i) care for the conditions or care needs defined in subdivisions D 3 and D 7 may be provided to the resident by a licensed physician, a licensed nurse or a nurse holding a multistate licensure privilege under a physician's treatment plan, or a home care organization licensed in Virginia or (ii) care for the conditions or care needs defined in subdivision D 7 may also be provided to the resident by facility staff if the care is delivered in accordance with the regulations of the Board of Nursing for delegation by a registered nurse Part VIII (18VAC90-20-420 et seq.) of 18VAC90-20.

The Board shall adopt regulations to implement the provisions of this subsection.

F. In adopting regulations pursuant to subsections A, B, C, D, and E the Board shall consult with the Departments of Health and Behavioral Health and Developmental Services.

1993, cc. 957, 993, § 63.1-174.001; 1995, cc. 649, 844; 2000, c. 176; 2002, c. 747; 2004, c. 49; 2005, cc. 610, 716, 724, 924; 2007, c. 539; 2009, cc. 813, 840; 2012, cc. 476, 507; 2013, c. 320.

**§ 63.2-1806. Hospice care**

Notwithstanding § 63.2-1805, at the request of the resident, hospice care may be provided in an assisted living facility under the same requirements for hospice programs provided in Article 7 (§ 32.1-162.1 et seq.) of Chapter 5 of Title 32.1, if the hospice program determines that such program is appropriate for the resident. However, to the extent allowed by federal law, no assisted living facility shall be required to provide or allow hospice care if such hospice care restrictions are included in a disclosure statement that is signed by the resident prior to admission.

1995, c. 649, § 63.1-174.2; 2002, c. 747; 2003, c. 526; 2007, c. 397; 2016, c. 598.

**§ 63.2-1807. Certification in cardiopulmonary resuscitation; do not resuscitate orders**

The owners or operators of any assisted living facility may provide that their employees who are certified in cardiopulmonary resuscitation (CPR) shall not be required to resuscitate any resident for whom a valid written order not to resuscitate in the event of cardiac or respiratory arrest has

been issued by the attending physician and has been included in the resident's individualized service plan.

1996, c. 775, § 63.1-174.3; 2002, c. 747.

**§ 63.2-1808. Rights and responsibilities of residents of assisted living facilities; certification of licensure**

A. Any resident of an assisted living facility has the rights and responsibilities enumerated in this section. The operator or administrator of an assisted living facility shall establish written policies and procedures to ensure that, at the minimum, each person who becomes a resident of the assisted living facility:

1. Is fully informed, prior to or at the time of admission and during the resident's stay, of his rights and of all rules and expectations governing the resident's conduct, responsibilities, and the terms of the admission agreement; evidence of this shall be the resident's written acknowledgment of having been so informed, which shall be filed in his record;

2. Is fully informed, prior to or at the time of admission and during the resident's stay, of services available in the facility and of any related charges; this shall be reflected by the resident's signature on a current resident's agreement retained in the resident's file;

3. Unless a committee or conservator has been appointed, is free to manage his personal finances and funds regardless of source; is entitled to access to personal account statements reflecting financial transactions made on his behalf by the facility; and is given at least a quarterly accounting of financial transactions made on his behalf when a written delegation of responsibility to manage his financial affairs is made to the facility for any period of time in conformance with state law;

4. Is afforded confidential treatment of his personal affairs and records and may approve or refuse their release to any individual outside the facility except as otherwise provided in law and except in case of his transfer to another care-giving facility;

5. Is transferred or discharged only when provided with a statement of reasons, or for nonpayment for his stay, and is given reasonable advance notice; upon notice of discharge or upon giving reasonable advance notice of his desire to move, shall be afforded reasonable assistance to ensure an orderly transfer or discharge; such actions shall be documented in his record;

6. In the event a medical condition should arise while he is residing in the facility, is afforded the opportunity to participate in the planning of his program of care and medical treatment at the facility and the right to refuse treatment;

7. Is not required to perform services for the facility except as voluntarily contracted pursuant to a voluntary agreement for services that states the terms of consideration or remuneration and is documented in writing and retained in his record;

8. Is free to select health care services from reasonably available resources;

9. Is free to refuse to participate in human subject experimentation or to be party to research in which his identity may be ascertained;

10. Is free from mental, emotional, physical, sexual, and economic abuse or exploitation; is free from forced isolation, threats or other degrading or demeaning acts against him; and his known needs are not neglected or ignored by personnel of the facility;

11. Is treated with courtesy, respect, and consideration as a person of worth, sensitivity, and dignity;

12. Is encouraged, and informed of appropriate means as necessary, throughout the period of stay to exercise his rights as a resident and as a citizen; to this end, he is free to voice grievances and recommend changes in policies and services, free of coercion, discrimination, threats or reprisal;

13. Is permitted to retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other residents;

14. Is encouraged to function at his highest mental, emotional, physical and social potential;

15. Is free of physical or mechanical restraint except in the following situations and with appropriate safeguards:

a. As necessary for the facility to respond to unmanageable behavior in an emergency situation, which threatens the immediate safety of the resident or others;

b. As medically necessary, as authorized in writing by a physician, to provide physical support to a weakened resident;

16. Is free of prescription drugs except where medically necessary, specifically prescribed, and supervised by the attending physician, physician assistant, or nurse practitioner;

17. Is accorded respect for ordinary privacy in every aspect of daily living, including but not limited to the following:

a. In the care of his personal needs except as assistance may be needed;

b. In any medical examination or health-related consultations the resident may have at the facility;

c. In communications, in writing or by telephone;

d. During visitations with other persons;

e. In the resident's room or portion thereof; residents shall be permitted to have guests or other residents in their rooms unless to do so would infringe upon the rights of other residents; staff may not enter a resident's room without making their presence known except in an emergency or in accordance with safety oversight requirements included in regulations of the Board;

f. In visits with his spouse; if both are residents of the facility they are permitted but not required to share a room unless otherwise provided in the residents' agreements;

18. Is permitted to meet with and participate in activities of social, religious, and community groups at his discretion unless medically contraindicated as documented by his physician, physician assistant, or nurse practitioner in his medical record;

19. Is fully informed, as evidenced by the written acknowledgment of the resident or his legal representative, prior to or at the time of admission and during his stay, that he should exercise whatever due diligence he deems necessary with respect to information on any sex offenders registered pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, including how to obtain such information. Upon request, the assisted living facility shall assist the resident, prospective resident, or the legal representative of the resident or prospective resident in accessing this information and provide the resident, prospective resident, or the legal representative of the resident or prospective resident with printed copies of the requested information; and

20. Is informed, in writing and upon request, of whether the assisted living facility maintains the minimum liability coverage, as established by the Board pursuant to subdivision A 10 of § 63.2-1805.

B. If the resident is unable to fully understand and exercise the rights and responsibilities contained in this section, the facility shall require that a responsible individual, of the resident's choice when possible, designated in writing in the resident's record, be made aware of each item in this section and the decisions that affect the resident or relate to specific items in this section; a resident shall be assumed capable of understanding and exercising these rights unless a physician determines otherwise and documents the reasons for such determination in the resident's record.

C. The rights and responsibilities of residents shall be printed in at least 12-point type and posted conspicuously in a public place in all assisted living facilities. The facility shall also post the name and telephone number of the regional licensing supervisor of the Department, the Adult Protective Services' toll-free telephone number, as well as the toll-free telephone number for the Virginia Long-Term Care Ombudsman Program, any sub-state ombudsman program serving the area, and the toll-free number of the Commonwealth's designated protection and advocacy system.

D. The facility shall make its policies and procedures for implementing this section available and accessible to residents, relatives, agencies, and the general public.

E. The provisions of this section shall not be construed to restrict or abridge any right that any resident has under law.

F. Each facility shall provide appropriate staff training to implement each resident's rights included in this section.

G. The Board shall adopt regulations as necessary to carry out the full intent of this section.

H. It shall be the responsibility of the Commissioner to ensure that the provisions of this section are observed and implemented by assisted living facilities as a condition to the issuance, renewal, or continuation of the license required by this article.

1984, c. 677, § 63.1-182.1; 1989, c. 271; 1990, c. 458; 1992, c. 356; 1993, cc. 957, 993; 1997, c. 801; 2000, c. 177; 2002, cc. 45, 572, 747; 2004, c. 855; 2006, c. 396; 2007, cc. 120, 163; 2013, cc. 320, 571.

**§ 63.2-1808.1. Life-sharing communities**

A. For the purposes of this section:

"Life-sharing community" means a residential setting, operated by a nonprofit organization, that (i) offers a safe environment in free standing, self-contained homes for residents that have been determined by a licensed health-care professional as having at least one developmental disability; (ii) is an environment located in a community setting where residents participate in therapeutic activities including artistic crafts, stewardship of the land, and agricultural activities; (iii) consists of the residents as well as staff and volunteers who live together in residential homes; (iv) operates at a ratio of at least one staff member, volunteer, or supervising personnel for every three residents in each self-contained home household; and (v) has at least one supervisory staff member on premises to be responsible for the care, safety, and supervision of the residents at all times.

"Resident" means an individual who has been determined by a physician or nurse practitioner to have at least one developmental disability and who resides at the life-sharing community on a full-time basis.

"Volunteer" means an individual who resides in the life-sharing community on a full-time basis and who assists residents with their daily activities and receives no wages. A volunteer may receive a small stipend for personal expenses.

B. Any facility seeking to operate as a life-sharing community shall file with the Commissioner: (i) a statement of intent to operate as a life-sharing community; (ii) a certification that at the time of admission, a contract and written notice was provided to each resident and his legally authorized representative that includes a statement of disclosure that the facility is exempt from licensure as an "assisted living facility," and (iii) documentary evidence that such life-sharing community is a private nonprofit organization in accordance with 501(c)(3) of the Internal Revenue Code of 1954, as amended.

C. Upon filing an initial statement of intent to operate as a life-sharing community, and every two years thereafter, the life-sharing community shall certify that the local health department, building inspector, fire marshal, or other local official designated by the locality to enforce the Statewide Fire Prevention Code, and any other local official required by law to inspect the premises, have inspected the physical facilities of the life-sharing community and have determined that the facility is in compliance with all applicable laws and regulations with regard to food service activities,

health and sanitation, water supply, building codes, and the Statewide Fire Prevention Code and the Uniform Statewide Building Code.

D. Upon filing an initial statement of intent to operate as a life-sharing community, and every two years thereafter, the life-sharing community shall provide the Commissioner documentary evidence that:

1. Life-sharing community staff and volunteers have completed a training program that includes instruction in personal care of residents, house management, and therapeutic activities;

2. Volunteers and staff have completed first aid and Cardio-Pulmonary Resuscitation training;

3. Each resident's needs are evaluated using the Uniform Assessment Instrument, and Individual Service Plans are developed for each resident annually;

4. The residents of the life-sharing community are each 21 years of age or older;

5. A criminal background check through the Criminal Records Exchange has been completed for each (i) full-time salaried staff member and (ii) volunteer as defined in this section.

E. A residential facility operating as a life-sharing facility shall be exempt from the licensing requirements of Article 1 (§ 63.2-1800 et seq.) of Chapter 18 of Title 63.2 applicable to assisted living facilities.

F. The Commissioner may perform unannounced on-site inspections of a life-sharing community to determine compliance with the provisions of this section and to investigate any complaint that the life-sharing community is not in compliance with the provisions of this section, or to otherwise ensure the health, safety, and welfare of the life-sharing community residents. The Commissioner may revoke the exemption from licensure pursuant to this chapter for any life-sharing community for serious or repeated violation of the requirements of this section and order that the facility cease operations or comply with the licensure requirements of an assisted living facility. If a life-sharing community does not file the statement and documentary evidence required by this section, the Commissioner shall give reasonable notice to such life-sharing community of the nature of its noncompliance and may thereafter take action as he determines appropriate, including a suit to enjoin the operation of the life-sharing community.

G. All life-sharing communities shall provide access to their facilities and residents by staff of community services boards and behavioral health authorities as defined in § 37.2-100 for the purpose of (i) assessing or evaluating, (ii) providing case management or other services or assistance, or (iii) monitoring the care of individuals receiving services who are residing in the facility. Such staff or contractual agents also shall be given reasonable access to other facility residents who have previously requested their services.

H. Any residents of any life-sharing community shall be accorded the same rights and responsibilities as residents in assisted living facilities as provided in subsections A through F of § 63.2-1808.

I. A life-sharing community shall not admit or retain individuals with any of the conditions or care needs as provided in subsection C of § 63.2-1805.

J. Notwithstanding § 63.2-1805, at the request of the resident, hospice care may be provided in a life-sharing community under the same requirements for hospice programs provided in Article 7 (§ 32.1-162.1 et seq.) of Chapter 5 of Title 32.1 if the hospice program determines that such a program is appropriate for the resident.

2007, c. 677; 2012, cc. 476, 507.

## Article 2 - CHILD WELFARE AGENCIES

### § 63.2-1809. Regulated child day programs to require proof of child identity and age; report to law-enforcement agencies

A. Upon enrollment of a child in a regulated child day program, such child day program shall require information from the person enrolling the child regarding previous child day care and schools attended by the child. The regulated child day program shall also require that the person enrolling the child present the regulated child day program with the proof of the child's identity and age. The proof of identity, if reproduced or retained by the child day program or both, shall be destroyed upon the conclusion of the requisite period of retention. The procedures for the disposal, physical destruction or other disposition of the proof of identity containing social security numbers shall include all reasonable steps to destroy such documents by (i) shredding, (ii) erasing, or (iii) otherwise modifying the social security numbers in those records to make them unreadable or indecipherable by any means.

B. For purposes of this section:

"Proof of identity" means a certified copy of a birth certificate or other reliable proof of the child's identity and age.

"Regulated child day program" is one in which a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period that is licensed pursuant to § 63.2-1701, voluntarily registered pursuant to § 63.2-1704, certified as a preschool or nursery school program pursuant to § 63.2-1717, exempted from licensure as a child day center operated by a religious institution pursuant to § 63.2-1716, or approved as a family day home by a licensed family day system.

C. If the parent, guardian, or other person enrolling the child in a regulated child day program for longer than two consecutive days or other pattern of regular attendance does not provide the information required by subsection A within seven business days of initial attendance, such child day program shall immediately notify the local law-enforcement agency in its jurisdiction of such failure to provide the requested information.

D. Upon receiving notification of such failure to provide the information required by subsection A, the law-enforcement agency shall, if available information warrants, immediately submit an

inquiry to the Missing Children Information Clearinghouse and, with the assistance of the local department, if available information warrants, conduct the appropriate investigation to determine whether the child is missing.

E. The Board shall adopt regulations to implement the provisions of this act.

1998, c. 860, § 63.1-196.002; 2002, c. 747; 2004, c. 450.

**§ 63.2-1809.1. Insurance notice requirements for family day homes; civil penalty**

A. Any person who operates a family day home approved by a licensed family day system, a licensed family day home, or a voluntarily registered family day home shall furnish a written notice to the parent or guardian of each child under the care of the family day home, which states whether there is liability insurance in force to cover the operation of the family day home; provided, that no person under this section shall state that liability insurance is in place to cover the operation of the family day home, unless there is a minimum amount of coverage as established by the Department.

B. Each parent or guardian shall acknowledge, in writing, receipt of such notice. In the event there is no longer insurance coverage, the person operating the family day home shall (i) notify each parent or guardian within 10 business days after the effective date of the change and (ii) obtain written acknowledgment of such notice. A copy of an acknowledgment required under this section shall be maintained on file at the family day home at all times while the child attends the family day home and for 12 months after the child's last date of attendance.

C. Any person who fails to give any notice required under this section shall be subject to a civil penalty of up to $500 for each such failure.

2006, c. 923; 2007, c. 594.

**§ 63.2-1810. Dual licenses for certain child day centers**

Any facility licensed as a child day center which also meets the requirements for a license as a summer camp by the Department of Health under the provisions of § 35.1-18 shall be entitled to a summer camp license. Such a facility shall comply with all of the regulations adopted by the Board and the State Board of Health for each such license.

1981, c. 287, § 63.1-196.01; 1987, c. 698; 1993, cc. 730, 742; 2002, c. 747; 2012, cc. 803, 835.

**§ 63.2-1811. Asbestos inspection required for child day centers**

The Commissioner shall not issue a license to any child day center which is located in a building built prior to 1978 until he receives a written statement that the building has been inspected for asbestos, as defined by § 2.2-1162, and in accordance with the regulations for initial asbestos inspections pursuant to the Asbestos Hazard Emergency Response Act, 40 CFR Pt. 763 -- Asbestos Containing Materials in Schools. The inspection shall be conducted by personnel competent to identify the presence of asbestos and licensed in Virginia as an asbestos inspector and as an asbestos management planner pursuant to Chapter 5 (§ 54.1-500 et seq.) of Title 54.1. The written

statement shall state that either (i) no asbestos was detected or (ii) asbestos was detected and response actions to abate any risk to human health have been completed or (iii) asbestos was detected and response actions to abate any risk to human health have been recommended in accordance with a specified schedule and plan pursuant to applicable state and federal statutes and regulations. The statement shall include identification of any significant hazard areas, the date of the inspection and be signed by the person who inspected for the asbestos. If asbestos was detected, an operations and maintenance plan shall be developed in accordance with the regulations of the Asbestos Hazard Emergency Response Act and the statement shall be signed by the person who prepared the operations and maintenance plan. Any inspection, preparation of an operations and maintenance plan or response action shall be performed by competent personnel who have been licensed in accordance with the provisions of Chapter 5 of Title 54.1.

When asbestos has been detected, the applicant for licensure shall also submit to the Commissioner a written statement that response actions to abate any risk to human health have been or will be initiated in accordance with a specified schedule and plan as recommended by an asbestos management planner licensed in Virginia. This statement shall be signed by the applicant for licensure.

The written statements required by this section shall be submitted for approval to the Commissioner's representative prior to issuance of a license. The provisions of this section shall not apply to child day centers located in buildings required to be inspected pursuant to Article 5 (§ 2.2-1162 et seq.) of Chapter 11 of Title 2.2.

1987, c. 654, § 63.1-198.01; 1988, c. 723; 1993, cc. 660, 730, 742; 2002, c. 747.

**§ 63.2-1812. Delay in acting on application, or in notification**

In case the Commissioner fails to take final action upon an application for a license within sixty days after the application is made, either by way of issuance or refusal, or fails within such time to notify the applicant thereof, it shall be lawful for the applicant to engage in the operations or activities for which the license is desired, until the Commissioner has taken final action and notified the applicant thereof; however, no application shall be deemed made until all the required information is submitted in the form prescribed by the Commissioner. The provisions of this section shall not apply to a children's residential facility, child-placing agency, or independent foster home.

Code 1950, § 63-237; 1968, cc. 578, 585, § 63.1-200; 1999, c. 740; 2002, c. 747.

**§ 63.2-1813. Visitation by parents or guardians in child day programs**

A custodial parent or guardian shall be admitted to any child day program. For purposes of this section, "child day program" is one in which a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of thirteen for less than a twenty-four-hour period, regardless of whether it is licensed. Such right of admission shall apply only while the child is in the child day program.

1985, c. 251, § 63.1-210.1; 1993, cc. 730, 742; 2002, c. 747.

**§ 63.2-1814. Public funds to be withheld for serious or persistent violations**

The Board and the State Board of Education may adopt policies, as permitted by state and federal law, to restrict the eligibility of a licensed child welfare agency to receive or continue to receive funds when such agency is found to be in serious or persistent violation of regulations.

1993, cc. 730, 742, § 63.1-211.2; 1996, c. 492; 2002, c. 747.

**§ 63.2-1815. Subtitle not to apply to certain schools and institutions**

None of the provisions of this subtitle shall apply to any private school or charitable institution incorporated under the laws of this Commonwealth, which is located West of Sandy Ridge and on the watersheds of Big Sandy River, and to which no contributions are made by the Commonwealth or any agency thereof.

Code 1950, § 63-255; 1968, c. 578, § 63.1-218; 2002, c. 747.

**§ 63.2-1816. Municipal and county appropriations; contracts**

The governing bodies of the several cities and counties of this Commonwealth may, in their discretion, appropriate to incorporated charitable organizations licensed by the Commissioner for the purpose of receiving and caring for children, or placing or boarding them in private homes, such sums as to them may seem proper, for the maintenance and care of such dependent children as the charitable organizations may receive from the respective cities and counties. The governing body of any county may make contracts with such organizations.

Code 1950, § 63-256; 1968, c. 578, § 63.1-219; 2002, c. 747.

**§ 63.2-1817. Acceptance and control over children by licensed child-placing agency, children's residential facility or independent foster home**

A licensed child-placing agency, children's residential facility or independent foster home shall have the right to accept, for any purpose not contrary to the limitations contained in its license, such children as may be entrusted or committed to it by the parents, guardians, relatives or other persons having legal custody thereof, or committed by any court of competent jurisdiction. The agency, facility or home shall, within the terms of its license and the agreement or order by which such child is entrusted or committed to its care, have custody and control of every child so entrusted or committed and accepted, until he is lawfully discharged, has been adopted, or has attained his majority. An entrustment agreement for the termination of parental rights and responsibilities with respect to such child shall be executed in writing and notarized.

An agency that is licensed as a child-placing agency by the Department and certified as a proprietary school for students with disabilities by the Department of Education shall not be required to take custody of any child placed in its special education program but shall enter into a placement agreement with the parents or guardian of the child concerning the respective responsibilities of the agency and the parents or guardian for the care and control of the child. Such an

agency shall conform with all other legal requirements of licensed child-placing agencies including the provisions of §§ 16.1-281 and 16.1-282.

A licensed private child-placing agency may accept placement of a child through an agreement with a local department where the local department retains legal custody of the child or where the parents or legal guardian of the child retain legal custody but have entered into a placement agreement with the local department or the public agency designated by the community policy and management team.

Whenever a licensed child-placing agency accepts legal custody of a child, the agency shall comply with §§ 16.1-281 and 16.1-282.

A children's residential facility licensed as a temporary emergency shelter may accept a child for placement provided that verbal agreement for placement is obtained from the parents, guardians, relatives or other persons having legal custody thereof, within eight hours of the child's arrival at the facility and provided that a written placement agreement is completed and signed by the legal guardian and the facility representative within 24 hours of the child's arrival or by the end of the next business day after the child's arrival.

2002, c. 747; 2004, c. 815.

**§ 63.2-1818. Reports to Commissioner**

Upon the entry of a final order of adoption involving a child placed by a licensed child-placing agency, that agency shall transmit to the Commissioner all reports and collateral information in connection with the case which shall be preserved by the Commissioner in accordance with § 63.2-1246. Such agency may keep duplicate copies of such reports and collateral information or may obtain copies of such documents from the Commissioner at a reasonable fee as prescribed by the Board.

2002, c. 747.

**§ 63.2-1819. Where child-placing agencies may place children**

Any licensed child-placing agency may place or negotiate and arrange for the placement of children in any licensed children's residential facility, and, unless its license contains a limitation to the contrary, a licensed child-placing agency may also place or arrange for the placement of such persons in any suitable foster home or independent living arrangement.

2002, c. 747; 2008, cc. 475, 483.

# Subtitle V - ADMINISTRATIVE CHILD SUPPORT

## Chapter 19 - CHILD SUPPORT ENFORCEMENT

## Article 1 - GENERAL PROVISIONS

**§ 63.2-1900. Definitions**

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

"Administrative order" or "administrative support order" means a noncourt-ordered legally enforceable support obligation having the force and effect of a support order established by the court.

"Assignment of rights" means the legal procedure whereby an individual assigns support rights to the Commonwealth on behalf of a dependent child or spouse and dependent child.

"Authorization to seek or enforce a support obligation" means a signed authorization to the Commonwealth to seek or enforce support on behalf of a dependent child or a spouse and dependent child or on behalf of a person deemed to have submitted an application by operation of law.

"Cash medical support" means the proportional amount the court or the Department shall order both parents to pay toward reasonable and necessary unreimbursed medical or dental expenses pursuant to subsection D of § 20-108.2.

"Court order" means any judgment or order of any court having jurisdiction to order payment of support or an order of a court of comparable jurisdiction of another state ordering payment of a set or determinable amount of support moneys.

"Custodial parent" means the natural or adoptive parent with whom the child resides; a stepparent or other person who has physical custody of the child and with whom the child resides; or a local board that has legal custody of a child in foster care.

"Debt" means the total unpaid support obligation established by court order, administrative process or by the payment of public assistance and owed by a noncustodial parent to either the Commonwealth or to his dependent(s).

"Department-sponsored health care coverage" means any health care coverage that the Department may make available through a private contractor for children receiving child support services from the Department.

"Dependent child" means any person who meets the eligibility criteria set forth in § 63.2-602, whose support rights have been assigned or whose authorization to seek or enforce a support obligation has been given to the Commonwealth and whose support is required by Titles 16.1 and 20.

"Electronic means" means service of a required notice by the Department through its secure online child support portal to any person who has agreed to accept service through the portal and has created a user account. The portal shall record and maintain the date and time service is accepted by the user.

"Employee" means any individual receiving income.

"Employer" means the source of any income.

"Financial institution" means a depository institution, an institution-affiliated party, any federal credit union or state credit union including an institution-affiliated party of such a credit union, and any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in this Commonwealth.

"Financial records" includes, but is not limited to, records held by employers showing income, profit sharing contributions and benefits paid or payable and records held by financial institutions, broker-dealers and other institutions and entities showing bank accounts, IRA and separate contributions, gross winnings, dividends, interest, distributive share, stocks, bonds, agricultural subsidies, royalties, prizes and awards held for or due and payable to a responsible person.

"Foreign support order" means any order issued outside of the Commonwealth by a court or tribunal as defined in § 20-88.32.

"Health care coverage" means any plan providing hospital, medical or surgical care coverage for dependent children provided such coverage is available and can be obtained by a parent, parents, or a parent's spouse at a reasonable cost.

"Income" means any periodic form of payment due an individual from any source and shall include, but not be limited to, income from salaries, wages, commissions, royalties, bonuses, dividends, severance pay, payments pursuant to a pension or retirement program, interest, trust income, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, veterans' benefits, spousal support, net rental income, gifts, prizes or awards.

"Mistake of fact" means an error in the identity of the payor or the amount of current support or arrearage.

"Net income" means that income remaining after the following deductions have been taken from gross income: federal income tax, state income tax, federal income compensation act benefits, any union dues where collection thereof is required under federal law, and any other amounts required by law.

"Noncustodial parent" means a responsible person who is or may be obligated under Virginia law for support of a dependent child or child's caretaker.

"Obligee" means (i) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered, (ii) a state or political subdivision to which the rights under a duty of support or support order have been assigned or that has independent claims based on financial assistance provided to an individual obligee, or (iii) an individual seeking a judgment determining parentage of the individual's child.

"Obligor" means an individual, or the estate of a decedent, who (i) owes or is alleged to owe a duty of support, (ii) is alleged but has not been adjudicated to be a parent of a child, or (iii) is liable under a support order.

"Payee" means any person to whom spousal or child support is to be paid.

"Reasonable cost" pertaining to health care coverage for dependent children means available, in an amount not to exceed five percent of the parents' combined gross income, and accessible through employers, unions or other groups, or Department-sponsored health care coverage, without regard to service delivery mechanism; unless the court deems otherwise in the best interests of the child or by agreement of the parties.

1974, c. 413, § 63.1-250; 1975, cc. 311, 596; 1976, c. 357; 1983, c. 66; 1985, c. 488; 1986, c. 594; 1988, c. 906; 1991, cc. 651, 694; 1997, cc. 796, 895; 1998, c. 727; 2002, cc. 747, 844; 2007, c. 600; 2009, c. 713; 2010, c. 243; 2016, c. 29.

**§ 63.2-1901. Purpose of chapter; powers and duties of the Department**

It is the purpose of this chapter to promote the efficient and accurate collection, accounting and receipt of support for financially dependent children and their custodians, and to further the effective and timely enforcement of such support while ensuring that all functions in the Department are appropriate or necessary to comply with applicable federal law.

Nonattorney employees of the Department are authorized to complete, sign and file petitions and motions on forms approved by the Supreme Court of Virginia relating to the establishment, modification, or enforcement of support in Department cases in the juvenile and domestic relations district courts. Orders entered prior to July 1, 2008, shall not be deemed void or voidable solely because such petitions and motions were signed by nonattorney employees.

When so ordered by the court or the Department, support for financially dependent children and their custodians shall be paid by obligors to the Department's State Disbursement Unit (SDU) or in district offices located within the Commonwealth for processing by the SDU. The Department shall have authority to enter into contracts with any appropriate public or private entities to enforce, collect, account for and disburse payments for child or spousal support.

The Division of Child Support Enforcement within the Department shall be authorized to issue payments to implement the disbursement of funds pursuant to the provisions of this section.

1974, c. 413, § 63.1-249; 1975, c. 596; 1976, c. 357; 1987, cc. 658, 706; 1998, c. 727; 2001, c. 573; 2002, c. 747; 2008, cc. 136, 845.

**§ 63.2-1902. Central unit for information and administration; request and receipt of information from other entities and agencies; disclosure of such information**

The Department is authorized and directed to establish a central unit within the Department to administer the Title IV D State Plan according to 45 C.F.R. 302.12 . The central unit shall have the statewide jurisdiction and authority to:

1. Establish a registry for the receipt of information;

2. Answer interstate inquiries concerning noncustodial parents;

3. Coordinate and supervise departmental activities in relation to noncustodial parents to ensure effective cooperation with law-enforcement agencies; and

4. Contract and enter into cooperative agreements with individuals and agencies including law-enforcement agencies, in order that they may assist the Department in its responsibilities.

The central unit within the Department shall supervise offices whose primary functions are:

a. Location of absent noncustodial parents;

b. Assessment of the ability of parents to pay child or child and spousal support and to obtain health care coverage or cash medical support, or both, for dependent children;

c. Establishment, modification and enforcement of support obligations including health care coverage for dependent children, through administrative action;

d. Preparation of individual cases for court action existing under all laws of the Commonwealth;

e. Ensuring on a consistent basis that support continues in all cases in which support is assessed administratively or ordered by the court; and

f. Provision of its services in establishing paternity and establishing and enforcing support obligations equally to public-assisted and nonpublic-assisted families.

To effectuate the purposes of this section, the Commissioner may request and shall receive from the records of state, county and local agencies within and without the Commonwealth, including but not limited to such agencies and entities responsible for vital records; tax and revenue; real and titled personal property; authorizations to engage in a business, trade, profession or occupation; employment security; motor vehicle licensing and registration; public assistance programs and corrections, all information and assistance as authorized by this chapter. The Commissioner may request from state and local criminal justice agencies within the Commonwealth assistance in locating and serving individuals who owe child support and have an outstanding civil show cause summons or capias pursuant to § 16.1-278.16. Solely for the purposes of obtaining motor vehicle licensing and registration information from entities within and without the Commonwealth, the Division of Child Support Enforcement shall be deemed to be a criminal justice agency.

With respect to individuals who owe child support or are alleged in a pending paternity proceeding to be a putative father, the Commissioner may request and shall receive the names and addresses of such individuals and the names and addresses of such individuals' employers as appearing in the customer records of public service corporations and companies as defined in § 56-1, cable television companies and financial institutions. All state, county and city departments, boards, bureaus or other entities or agencies, officers and employees shall cooperate in the location of noncustodial parents who have abandoned or deserted, or are failing to support, children and their custodial parents and shall on request supply the Department with all information on hand relative to the location, income, benefits and property of such noncustodial parents, notwithstanding any provision of law making such information confidential. These entities are authorized to provide such information as is necessary for this purpose. Only information directly bearing on the identity and whereabouts of a person owing or asserted to be owing an obligation

of support shall be requested and used or transmitted by the Commissioner. The Commissioner may make such information available only to public officials, agencies and political subdivisions of this Commonwealth, and other states seeking to locate parents who have deserted their children and other persons liable for support of dependents for the purpose of enforcing their liability for support. A civil penalty not to exceed $1,000 may be assessed by the Commissioner for a failure to respond to a request for information made in accordance with this section.

Any public or private person, partnership, firm, corporation or association, any financial institution and any political subdivision, department or other entity of the Commonwealth who in good faith and in the absence of gross negligence, willful misconduct or breach of an ethical duty, provide information requested pursuant to this section shall be immune from liability, civil or criminal, that might otherwise result from the release of such information to the Department.

1988, c. 906, § 63.1-274.6; 1990, c. 836; 1991, cc. 545, 588; 1994, c. 665; 1997, cc. 796, 895; 2001, c. 573; 2002, c. 747; 2003, cc. 467, 929, 942; 2009, c. 713.

**§ 63.2-1903. Authority to issue certain orders; civil penalty**

A. In the absence of a court order, the Department shall have the authority to issue orders directing the payment of child, and child and spousal support and, if available at reasonable cost as defined in § 63.2-1900, to require a provision for health care coverage, including Department-sponsored health care coverage, or cash medical support, or both, for dependent children of the parents, which shall include the requirements specified for employers pursuant to subdivision A 5 of § 20-79.3. The Department shall have the authority to make available Department-sponsored health care coverage for children receiving child support services from the Department. If health care coverage is unavailable at a reasonable cost, as defined in § 63.2-1900, or inaccessible to either parent, the Department shall refer the dependent children to the Family Access to Medical Insurance Security plan pursuant to § 32.1-351. However, prior to referring the dependent children to the Family Access to Medical Insurance Security plan, the Department shall confirm that neither parent has access to health care coverage at a reasonable cost for the dependent children. If a child is enrolled in Department-sponsored health care coverage, the Department shall collect the cost of the coverage pursuant to subsection E of § 20-108.2.

In ordering the payment of child support, the Department shall set such support at the amount resulting from computation pursuant to the guideline set out in § 20-108.2, subject to the provisions of § 63.2-1918.

B. When a payee, as defined in § 63.2-1900, no longer has physical custody of a child, the Department shall have the authority to redirect child support payments to a custodial parent who has physical custody of the child when an assignment of rights has been made to the Department or an application for services has been made by such custodial parent with the Division of Child Support Enforcement.

C. The Department shall have the authority, upon notice from the Department of Medical Assistance Services, to use any existing enforcement mechanisms provided by this chapter to collect the wages, salary, or other employment income or to withhold amounts from state tax refunds of any obligor who has not used payments received from a third party to reimburse, as appropriate, either the other parent of such child or the provider of such services, to the extent necessary to reimburse the Department of Medical Assistance Services.

D. The Department may order the obligor and payee to notify each other or the Department upon request of current gross income as defined in § 20-108.2 and any other pertinent information which may affect child support amounts. For good cause shown, the Department may order that such information be provided to the Department and made available to the parties for inspection in lieu of the parties' providing such information directly to each other. The Department shall record the social security number of each party or control number issued to a party by the Department of Motor Vehicles pursuant to § 46.2-342 in the Department's file of the case.

E. The Department shall develop procedures governing the method and timing of periodic review and adjustment of child support orders established or enforced or both pursuant to Title IV-D of the Social Security Act, as amended. If there is an assignment under Title IV-A of the Social Security Act or at the request of either parent subject to the order, the Department shall initiate a review of such order every three years without requiring proof or showing of a change in circumstances, and shall initiate appropriate action to adjust such order in accordance with the provisions of § 20-108.2 and subject to the provisions of § 63.2-1918.

F. In order to provide essential information for whatever establishment or enforcement actions are necessary for the collection of child support, the Commissioner, the Director of the Division of Child Support Enforcement and district managers of Division of Child Support Enforcement offices shall have the right to (i) subpoena financial records of, or other information relating to, the noncustodial parent and obligee from any person, firm, corporation, association, or political subdivision or department of the Commonwealth and (ii) summons the noncustodial parent and obligee to appear in the Division's offices. The Commissioner, Director and district managers may also subpoena copies of state and federal income tax returns. The district managers shall be trained in the correct use of the subpoena process prior to exercising subpoena authority. A civil penalty not to exceed $1,000 may be assessed by the Commissioner for a failure to respond to a subpoena issued pursuant to this subsection.

G. In the absence of a court order, the Department may establish an administrative support order on an out-of-state obligor pursuant to subdivision A 8 or A 9 of § 8.01-328.1 or 20-88.35. The Department may also take action to enforce an administrative or court order on an out-of-state obligor. Service of such actions shall be in accordance with the provisions of § 8.01-296, 8.01-327 or 8.01-329 or by certified mail, return receipt requested, or electronic means in accordance with § 63.2-1917.

H. If a support order has been issued in another state but the obligor, the obligee, and the child now live in the Commonwealth, the Department may (i) enforce the order without registration, using all enforcement remedies available under this chapter and (ii) register the order in the appropriate tribunal of the Commonwealth for enforcement or modification.

1985, c. 488, § 63.1-250.1; 1986, c. 594; 1988, cc. 906, 907; 1989, c. 599; 1990, c. 836; 1991, cc. 651, 694; 1992, c. 716; 1994, cc. 729, 767; 1995, c. 595; 1996, cc. 491, 882, 925, 948; 1997, cc. 440, 467, 794, 796, 895, 898; 2002, cc. 747, 844; 2007, c. 600; 2009, cc. 125, 713; 2016, c. 29.

**§ 63.2-1904. Administrative support remedies available for individuals not receiving public assistance; fees**

The Department shall make available to those individuals not receiving public assistance, upon receipt of an authorization to seek or enforce a support obligation the same support services provided to recipients of public assistance. These services may include, but are not limited to:

1. Locating noncustodial parents to obtain child support;

2. Establishing paternity;

3. Establishing or modifying child support obligations, that shall include a provision for health care coverage for dependent children of the parents; and

4. Enforcing and collecting child support obligations; however, the only support in arrears that may be enforced by administrative action is (i) arrearages accrued or accruing under a court order or decree or (ii) arrearages on an administrative order accruing from the entry of such administrative order.

No individual shall be required to obtain support services from the Department prior to commencing a judicial proceeding to establish, modify, enforce or collect a child support obligation.

The Board shall charge the following fees:

a. One dollar, upon application for services pursuant to this section. At the option of the Department, the fee may be paid by the Department on behalf of the applicants;

b. Twenty-five dollars, for the cost of reopening a case within six months of requesting case closure; and

c. Twenty-five dollars per federal fiscal year in each case of an obligee who has never received assistance pursuant to the Temporary Assistance for Needy Families Program and for whom the Department has collected at least $500 of child support annually.

The Department is further designated as the public entity responsible for implementing immediate income withholding pursuant to § 466 of the Social Security Act, as amended.

1985, c. 488, § 63.1-250.2; 1986, c. 594; 1988, c. 906; 1992, c. 527; 1995, c. 714; 2002, c. 747; 2007, cc. 11, 600.

**§ 63.2-1905. Establishment of State Case Registry**

The Department shall keep and maintain a State Case Registry (Registry) that contains case records of services provided by the Division of Child Support Enforcement, as well as each support order established or modified in the Commonwealth. Records contained in this Registry shall be promptly updated, maintained, and regularly monitored, and shall include (i) information on administrative actions and administrative and judicial proceedings and orders relating to paternity establishment and support; (ii) information obtained from comparison with federal, state or local sources of information; (iii) information on support collections and distributions; and (iv) any other relevant information. The Supreme Court of Virginia shall report information concerning judicial proceedings and orders relating to paternity and support to the Department. The Department shall be permitted to disseminate Registry information for information comparisons with other state and federal agencies, and as may be required pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) and any regulations adopted thereto. Such information comparison activities shall include the following: (a) Federal Case Registry of Child Support Orders, (b) Federal Parent Locator Service, (c) Temporary Assistance for Needy Families and Medicaid, and (d) intrastate and interstate information comparisons.

1998, c. 109, § 63.1-250.1:3; 2002, c. 747.

**§ 63.2-1906. Department may disclose information to Internal Revenue Services**

Upon approval of the Department of Health and Human Services, the Department may disclose to and keep the Internal Revenue Services of the Treasury of the United States advised of the names of all persons who are under legal obligation to support any dependent child or dependent children or their custodial parents and who are not doing so, to the end that the Internal Revenue Services may have available to it the names of such persons for review in connection with income tax returns and claims of dependencies made by persons filing income tax returns.

1988, c. 906, § 63.1-274.3; 2002, c. 747.

**§ 63.2-1907. Child support enforcement; private contracts**

A. Pursuant to the authority granted in § 63.2-1901, child support enforcement field work administrative functions and central office payment processing functions in the Commonwealth may be performed by private entities. The Department shall supervise the administration of the child support enforcement program, let and monitor all contracts with private entities and ensure compliance with applicable state and federal laws and regulations. The Department may also enter into contracts with private collection agencies and other entities to effect the collection of child support arrearages. Contracts entered into pursuant to this section shall be in accordance with the applicable laws and regulations governing public entities pursuant to the Public Procurement Act (§ 2.2-4300 et seq.). Any contract to perform child support enforcement field work administrative functions and central office payment processing functions entered into by the Department shall contain a provision that the entity to whom the contract is awarded shall give employment preference to qualified persons whose employment with the Division of Child Support Enforcement is terminated as a result of the privatization of child support enforcement functions.

Notwithstanding any other provision of law, when hiring to fill vacant positions within the Department, preference shall be given to qualified persons who are unable to obtain employment with an entity who is awarded a contract to perform child support enforcement field work administrative functions and central office payment processing functions pursuant to this section and whose employment with the Division of Child Support Enforcement is terminated as a result of the privatization of child support enforcement functions.

B. The Board shall establish guidelines to implement the Department's responsibilities under this section. Such guidelines shall specify procedures by which child support enforcement funding mechanisms authorized by state and federal law are allocated to fund central office and privatized child support enforcement functions.

1996, c. 1054, § 63.1-249.1; 1998, cc. 494, 499; 2002, cc. 262, 747.

## Article 2 - PUBLIC ASSISTANCE

**§ 63.2-1908. Payment of public assistance for child or custodial parent constitutes debt to Department by noncustodial parents; limitations; Department subrogated to rights**

Any payment of public assistance money made to or for the benefit of any dependent child or children or their custodial parent creates a debt due and owing to the Department by the person or persons who are responsible for support of such children or custodial parent in an amount equal to the amount of public assistance money so paid. However, if a custodial parent receives TANF payments for some of the custodial parent's dependent children but not for other children pursuant to § 63.2-604, the custodial parent shall receive the total amount of support collected for the children for whom no TANF benefits are received. Such support payments shall not create a debt due and owing to the Department and the value of such payments shall not be counted as income for purposes of TANF eligibility and grant determination. Where there has been a court order for support, final decree of divorce ordering support, or administrative order under the provisions of this chapter for support, the debt shall be limited to the amount of such order or decree. The Commissioner, pursuant to § 63.2-1922, shall establish the debt in an amount determined to be consistent with a noncustodial parent's ability to pay. The Department shall have the right to petition the appropriate court for modification of a court order on the same grounds as either party to such cause.

The Department shall be subrogated to the right of such child or children or custodial parent to prosecute or maintain any support action or execute any administrative remedy existing under the laws of the Commonwealth to obtain reimbursement of moneys thus expended and may collect on behalf of any such child, children or custodial parent any amount contained in any court order of support or any administrative order of support regardless of whether or not the amount of such orders exceeds the amount of public assistance paid. Any support paid in excess of the total amount of public assistance paid shall be returned to the custodial parent by the Department. If a court order for support or final decree of divorce ordering support enters judgment for an amount

of support to be paid by such noncustodial parent, the Department shall be subrogated to the debt created by such order, and said money judgment shall be deemed to be in favor of the Department. In any judicial proceeding brought by an attorney on behalf of the Department pursuant to this section to enforce a support obligation in which the Department prevails, attorney's fees shall be assessed pursuant to § 63.2-1960.

The Department shall have the authority to pursue establishment and enforcement actions against the person responsible for support after the closure of the public assistance case unless the custodial parent notifies the Department in writing that child support enforcement services are no longer desired.

Debt created by an administrative support order under this section shall not be incurred by nor at any time be collected from a noncustodial parent who is the recipient of public assistance moneys for the benefit of minor dependent children for the period such person or persons are in such status. Recipients of federal supplemental security income shall not be subject to the establishment of an administrative support order while they receive benefits from that source.

1974, c. 413, § 63.1-251; 1975, c. 596; 1976, c. 357; 1977, cc. 538, 662; 1985, c. 488; 1988, c. 907; 1992, c. 716; 1993, cc. 534, 602; 1995, c. 450; 2002, c. 747.

**§ 63.2-1908.1. Arrears compromise program**

The Department may establish and operate an arrears compromise program pursuant to which it may compromise child support arrears and interest accrued thereon owed to the Commonwealth for reimbursement of public assistance paid. The program shall take into consideration the obligor's ability to pay.

2015, c. 506.

**§ 63.2-1909. Receipt of public assistance for child as assignment of right in support obligation; Commissioner as attorney for endorsing drafts**

By accepting public assistance for or on behalf of a child or children, the recipient shall be deemed to have made an assignment to the Department of any and all right, title, and interest in any support obligation and arrearages owed to or for such child or children or custodial parent up to the amount of public assistance money paid for or on behalf of such child or children or custodial parent for such term of time as such public assistance moneys are paid; provided, however, that the Department may thereafter continue to collect any outstanding support obligation or arrearage owed to the Department as a result of such assignment up to the amount of public assistance money paid for or on behalf of such child or children or custodial parent which has not been paid by the noncustodial parent. The recipient shall also be deemed, without the necessity of signing any document, to have appointed the Commissioner as his or her true and lawful attorney-in-fact to act in his or her name, place, and stead to perform the specific act of endorsing any and all drafts, checks, money orders or other negotiable instruments representing support payments

which are received on behalf of such child or children or custodial parent as reimbursement for the public assistance moneys previously paid to such recipient.

1974, c. 413, § 63.1-273; 1976, cc. 357, 549; 1977, c. 662; 2002, c. 747.

**§ 63.2-1910. Payment of foster care expenditures for child constitutes debt to local department by noncustodial parents; limitations; local department subrogated to rights**

Any payment by a local department or public agency designated by a community policy and management team for room, board, and social services for a child in the custody of, or placed with, the local department or public agency designated by the community policy and management team, creates a debt due and owing to the local department or public agency by the persons responsible for support of such child in an amount equal to the amount paid by the local department or designated public agency and shall be assessable by the local department or designated public agency. However, where there has been a court order for support, final decree of divorce ordering support, or administrative order for support, the debt shall be limited to the amount of such order or decree. The Commissioner, pursuant to § 63.2-1922, or the court, pursuant to § 16.1-290, shall establish the debt in an amount determined to be consistent with the noncustodial parent's ability to pay. The Department, local department, or designated public agency shall have the right to petition the appropriate court for modification of a court order on the same grounds as either party to such cause.

The Department shall be subrogated to the right of such child to prosecute or maintain any support action or execute any administrative remedy existing under the laws of the Commonwealth to obtain reimbursement of moneys thus expended, and may collect on behalf of any such child any amount contained in any court order of support or any administrative order of support regardless of whether or not the amount of such orders exceeds the total amount paid by the local department or designated public agency. Any support paid in excess of the total amount shall be maintained in an account at the local department or designated public agency on behalf of the child. Any funds remaining in the account at the time that the child leaves foster care shall be paid either to the new legal guardian or to the child if he has been emancipated. If a court order for support or final decree of divorce ordering support enters judgment for an amount of support to be paid by such noncustodial parent, the Department shall be subrogated to the debt created by such order, and the money judgment shall be deemed to be in favor of the Department. In any judicial proceeding brought by an attorney on behalf of the Department pursuant to this section to enforce a support obligation in which the Department prevails, attorney's fees shall be assessed pursuant to § 63.2-1960.

The Department shall have the authority to pursue establishment and enforcement actions against the persons responsible for support after the local department or designated public agency no longer has custody of the child or responsibility for foster care placement.

Debts created by an administrative support order under this section shall not be incurred by nor at any time collected from a noncustodial parent who is the recipient of public assistance for the benefit of minor dependent children for the period such person is in such status. Recipients of federal supplemental security income shall not be subject to the establishment of an administrative support order while they receive benefits from that source.

1995, c. 817, § 63.1-251.3; 2002, c. 747.

**§ 63.2-1911. Duty of local departments to enforce support; referral to Department**

Whenever a local department approves an application for public assistance on behalf of a child or children and it appears to the satisfaction of the local department that the child has been abandoned by the noncustodial parent or that the person who has a responsibility for the care, support, or maintenance of such child has failed or neglected to give proper care or support to such child, the local department shall refer the matter to the Division within the Department responsible for the enforcement of support.

1988, c. 906, § 63.1-274.2; 2002, c. 747.

**§ 63.2-1912. Minor noncustodial parents whose child receives TANF; child support obligations**

If a minor noncustodial parent whose child receives TANF is not in compliance with compulsory school attendance laws in Article 1 (§ 22.1-254 et seq.) of Chapter 14 of Title 22.1, he shall be required to pay child support as if he were an adult, and child support shall be collected.

1995, c. 450, § 63.1-105.5; 2002, c. 747.

## Article 3 - PATERNITY

**§ 63.2-1913. Administrative establishment of paternity**

The Department may establish the parent and child relationship between a child and a man upon request, verified by oath or affirmation, filed by a child, a parent, a person claiming parentage, a person standing in loco parentis to the child or having legal custody of the child, or a representative of the Department or the Department of Juvenile Justice. The request may be filed at any time before the child attains the age of eighteen years.

Pursuant to subsection F of § 63.2-1903, the Department may summons a parent or putative parent to appear in the office of the Division of Child Support Enforcement to provide such information as may be necessary to the proceeding.

Paternity may be established by a written statement of the father and mother made under oath acknowledging paternity or scientifically reliable genetic tests, including blood tests, which affirm at least a ninety-eight percent probability of paternity. The Department may order genetic testing and shall pay the costs of such tests, subject to recoupment from the father, if paternity is established. Where an original test is contested and additional testing is requested, the Department may require advance payment by the contestant.

Before a voluntary acknowledgment of paternity is accepted by the Department as the basis for establishing paternity, the Department shall provide to both the mother and the putative father a written and oral description of the rights and responsibilities of acknowledging paternity and the consequences that arise from a signed acknowledgment, including the right to rescind the acknowledgment within the earlier of (i) sixty days from the date of signing or (ii) the date of entry of an order in an administrative or judicial proceeding relating to the child in which the signatory is a party.

A genetic test result affirming at least a ninety-eight percent probability of paternity shall have the same legal effect as a judgment entered pursuant to § 20-49.8. When sixty days have elapsed from its signing, a voluntary statement acknowledging paternity shall have the same legal effect as a judgment entered pursuant to § 20-49.8 and shall be binding and conclusive unless, in a subsequent judicial proceeding, the person challenging the statement establishes that the statement resulted from fraud, duress or a material mistake of fact. In any subsequent proceeding in which a statement acknowledging paternity is subject to challenge, the legal responsibilities of any person signing it shall not be suspended during the pendency of the proceeding, except for good cause shown.

The order of the Department in proceedings pursuant to this section shall be served upon the putative father in accordance with the provisions of Chapter 8 (§ 8.01-285 et seq.) or Chapter 9 (§ 8.01-328 et seq.) of Title 8.01. The Department shall file a copy of its order determining paternity, including the information required by subsection C of § 20-49.8, with the State Registrar of Vital Records within thirty days after the acknowledgment becomes binding and conclusive or the order otherwise becomes final. No judicial or administrative proceeding shall be required to ratify an unchallenged acknowledgment of paternity nor shall the Department or the courts have any jurisdiction over proceedings to ratify an unchallenged acknowledgment.

1997, cc. 792, 896, § 63.1-250.1:2; 2002, c. 747.

**§ 63.2-1914. Hospital paternity establishment programs**

Each public and private birthing hospital in the Commonwealth shall provide unwed parents the opportunity to legally establish the paternity of a child prior to the child's discharge from the hospital following birth, by means of a voluntary acknowledgment of paternity signed by the mother and the father, under oath.

Birthing hospitals are defined as hospitals with licensed obstetric-care units, hospitals licensed to provide obstetric services, or licensed birthing centers associated with a hospital. Birthing centers are facilities outside hospitals that provide maternity services.

Designated staff members of such hospitals shall provide to both the mother and the alleged father, if he is present at the hospital, (i) written materials regarding paternity establishment, (ii) the forms necessary to voluntarily acknowledge paternity, (iii) a written and oral description of the rights and responsibilities of acknowledging paternity, and (iv) the opportunity, prior to the child's

discharge from the hospital, to speak with staff who are trained to provide information and answer questions about paternity establishment. The provision by designated hospital staff members of the information required by this section, consistent with federal regulations, shall not constitute the unauthorized practice of law pursuant to Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1.

Hospitals shall send the original acknowledgment of paternity containing the social security numbers, if available, of both parents, with the information required by Article 2 (§ 32.1-257 et seq.) of Chapter 7 of Title 32.1, to the State Registrar of Vital Records so that the birth certificate issued includes the name of the legal father of the child.

The Department shall (a) provide to birthing hospitals all necessary materials and forms, and a written description of the rights and responsibilities related to voluntary acknowledgment of paternity; (b) provide the necessary training, guidance and written instructions regarding voluntary acknowledgment of paternity; (c) annually assess each birthing hospital's paternity establishment program; (d) pay to each hospital an amount determined by regulation of the Board for each acknowledgment of paternity signed under oath by both parents; and (e) determine if a voluntary acknowledgment has been filed with the State Registrar of Vital Records in cases applying for paternity establishment services.

1994, c. 718, § 20-49.9; 1997, cc. 792, 896; 2002, c. 747.

## Article 4 - ORDERS AND REVIEW

### § 63.2-1915. Administrative support order

All administrative orders issued by the Department shall have the same force and effect as a court order. However, any order issued by a court of this Commonwealth supersedes an administrative order.

1988, c. 906, § 63.1-258.3; 2002, c. 747.

### § 63.2-1916. Notice of administrative support order; contents; hearing; modification

The Commissioner may proceed against a noncustodial parent whose support debt has accrued or is accruing based upon subrogation to, assignment of, or authorization to enforce a support obligation. Such obligation may be created by a court order for support of a child or child and spouse or decree of divorce ordering support of a child or child and spouse. In the absence of such a court order or decree of divorce, the Commissioner may, pursuant to this chapter, proceed against a person whose support debt has accrued or is accruing based upon payment of public assistance or who has a responsibility for the support of any dependent child or children and their custodial parent. The administrative support order shall also provide that support shall continue to be paid for any child over the age of 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent seeking or receiving child support, until such child reaches the age of 19 or graduates from high school, whichever comes first. The Commissioner shall initiate proceedings by issuing notice containing the administrative support order which shall become effective unless timely contested. The notice shall be served upon the debtor (a) in

accordance with the provisions of § 8.01-296, 8.01-327 or 8.01-329 or (b) by certified mail, return receipt requested, or by electronic means, or the debtor may accept service by signing a formal waiver. A copy of the notice shall be provided to the obligee. The notice shall include the following:

1. A statement of the support debt or obligation accrued or accruing and the basis and authority under which the assessment of the debt or obligation was made. The initial administrative support order shall be effective on the date of service and the first monthly payment shall be due on the first of the month following the date of service and the first of each month thereafter. A modified administrative support order shall be effective the date that notice of the review is served on the nonrequesting party, and the first monthly payment shall be due on the first day of the month following the date of such service and on the first day of each month thereafter. In addition, an amount shall be assessed for the partial month between the effective date of the order and the date that the first monthly payment is due. The assessment for the initial partial month shall be prorated from the effective date through the end of that month, based on the current monthly obligation. All payments are to be credited to current support obligations first, with any payment in excess of the current obligation applied to arrearages, if any;

2. A statement of the name, date of birth, and last four digits of the social security number of the child or children for whom support is being sought;

3. A statement that support shall continue to be paid for any child over the age of 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the party seeking or receiving child support, until such child reaches the age of 19 or graduates from high school, whichever comes first;

4. A demand for immediate payment of the support debt or obligation or, in the alternative, a demand that the debtor file an answer with the Commissioner within 10 days of the date of service of the notice stating his defenses to liability;

5. If known, the full name, date of birth, and last four digits of the social security number of each parent of the child; however, when a protective order has been issued or the Department otherwise finds reason to believe that a party is at risk of physical or emotional harm from the other party, only the name of the party at risk shall be included in the order;

6. A statement that if no answer is made on or before 10 days from the date of service of the notice, the administrative support order shall be final and enforceable, and the support debt shall be assessed and determined subject to computation, and is subject to collection action;

7. A statement that the debtor may be subject to mandatory withholding of income, the interception of state or federal tax refunds, interception of payments due to the debtor from the Commonwealth, notification of arrearage information to consumer reporting agencies, passport denial or suspension, or incarceration and that the debtor's property will be subject to lien and foreclosure, distraint, seizure and sale, an order to withhold and deliver, or withholding of income;

8. A statement that the parents shall keep the Department informed regarding access to health insurance coverage and health insurance policy information and a statement that health care coverage shall be required for the parents' dependent children if available at reasonable cost as defined in § 63.2-1900, or pursuant to subsection A of § 63.2-1903. If a child is enrolled in Department-sponsored health care coverage, the Department shall collect the cost of the coverage pursuant to subsection E of § 20-108.2;

9. A statement of each party's right to appeal and the procedures applicable to appeals from the decision of the Commissioner;

10. A statement that the obligor's income shall be immediately withheld to comply with this order unless the obligee, or the Department, if the obligee is receiving public assistance, and obligor agree to an alternative arrangement;

11. A statement that any determination of a support obligation under this section creates a judgment by operation of law and as such is entitled to full faith and credit in any other state or jurisdiction;

12. A statement that each party shall give the Department written notice of any change in his address, including email address, or phone number, including cell phone number, within 30 days;

13. A statement that each party shall keep the Department informed of the name, telephone number and address of his current employer;

14. A statement that if any arrearages for child support, including interest or fees, exist at the time the youngest child included in the order emancipates, payments shall continue in the total amount due (current support plus amount applied toward arrearages) at the time of emancipation until all arrearages are paid;

15. A statement that a petition may be filed for suspension of any license, certificate, registration, or other authorization to engage in a profession, trade, business, occupation, or recreational activity issued by the Commonwealth to a parent as provided in § 63.2-1937 upon a delinquency for a period of 90 days or more or in amount of $5,000 or more. The order shall indicate whether either or both parents currently hold such an authorization and, if so, the type of authorization held;

16. A statement that the Department of Motor Vehicles may suspend or refuse to renew the driver's license of any person upon receipt of notice from the Department of Social Services that the person (i) is delinquent in the payment of child support by 90 days or in an amount of $5,000 or more or (ii) has failed to comply with a subpoena, summons, or warrant relating to paternity or child support proceedings; and

17. A statement that on and after July 1, 1994, the Department of Social Services, as provided in § 63.2-1921 and in accordance with § 20-108.2, may initiate a review of the amount of support ordered by any court.

If no answer is received by the Commissioner within 10 days of the date of service or acceptance, the administrative support order shall be effective as provided in the notice. The Commissioner may initiate collection procedures pursuant to this chapter, Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 or Title 20. The debtor and the obligee have 10 days from the date of receipt of the notice to file an answer with the Commissioner to exercise the right to an administrative hearing.

Any changes in the amount of the administrative order must be made pursuant to this section. In no event shall an administrative hearing alter or amend the amount or terms of any court order for support or decree of divorce ordering support. No administrative support order may be retroactively modified, but may be modified from the date that notice of the review has been served on the nonrequesting party. Notice of each review shall be served on the nonrequesting party (1) in accordance with the provisions of § 8.01-296, 8.01-327, or 8.01-329, (2) by certified mail, return receipt requested, (3) by electronic means, or (4) by the nonrequesting party executing a waiver. The existence of an administrative order shall not preclude either an obligor or obligee from commencing appropriate proceedings in a juvenile and domestic relations district court or a circuit court.

1985, c. 488, § 63.1-252.1; 1986, c. 594; 1987, cc. 640, 649; 1988, c. 906; 1991, cc. 651, 694; 1993, c. 534; 1994, c. 764; 1995, cc. 593, 600; 1996, cc. 879, 884, 889; 1997, cc. 796, 895; 1998, cc. 107, 885; 2002, cc. 747, 844; 2004, c. 204; 2006, cc. 720, 869; 2007, c. 600; 2009, cc. 706, 713; 2016, c. 29.

**§ 63.2-1917. When delivery of notice to party at last known address may be deemed sufficient**

In any subsequent child support enforcement proceeding between the parties, upon sufficient showing that diligent effort was made to ascertain the location of a party, that party may be served with any required notice by delivery of the written notice to that party's residential or business address as filed with the court pursuant to § 20-60.3 or the Department, or if changed, as shown in the records of the Department or the court or by electronic means as defined in § 63.2-1900. However, any person served with notice as provided in this section may challenge, in a subsequent judicial proceeding, an order entered based upon such service on the grounds that he did not receive the notice and enforcement of the order would constitute manifest injustice.

1997, cc. 796, 895, § 63.1-250.2:1; 1998, c. 884; 2002, c. 747; 2016, c. 29.

**§ 63.2-1918. Administrative establishment of obligations**

The Department shall set child support at the amount resulting from computations pursuant to the guideline set out in § 20-108.2 in determining the required monthly support obligation, the amount of support obligation arrearage, if any, and the amount to be paid periodically against such arrearage. There shall be a rebuttable presumption that the amount of the award which would result from the application of the guidelines is the correct amount of child support to be awarded. In order to rebut the presumption the Department shall make written findings in its order that the application of the guidelines would be unjust or inappropriate in a particular case as determined

by relevant evidence pertaining to support for other children in the household or other children for whom any administrative or court order exists, or relevant evidence pertaining to imputed income to a person who is voluntarily unemployed or who fails to provide verification of income upon request of the Department; provided that income may not be imputed to the custodial parent because (i) a child is not regularly attending school, (ii) child care services are not available, or (iii) the cost of such child care services are not added to the basic child support obligation. Additional factors that may lead to rebuttal of the presumption shall be determined by Department regulation.

1988, c. 907, § 63.1-264.2; 1989, c. 599; 1992, c. 79; 1996, cc. 947, 1029; 2002, c. 747.

**§ 63.2-1919. Requirement to provide financial statements**

Any noncustodial parent in the Commonwealth whose absence or failure to provide support and maintenance is the basis upon which an application is filed for child support services or public assistance and any custodial parent who applies for public assistance or child support services shall be required to complete a statement of his or her current monthly income, his or her total income over the past twelve months, amounts due from or to such person or parent under any court or administrative orders for support of a child or child and spouse, the number of dependents for whom he or she is providing support, the amount he or she is contributing regularly toward the support of all children or custodial parents for whom application is made, and such other information as is pertinent to determining his or her ability to support his or her children or custodial parent. Such noncustodial parent shall certify under penalty of perjury the correctness of the statement. Such statement shall be provided upon demand made by the Department or any attorney representing the Department. Additional statements shall be filed annually thereafter with the Department as long as a debt to the Department exists or as long as there is an authorization for the Department to collect or enforce a support obligation. Failure to comply with this section shall constitute a Class 4 misdemeanor.

1988, c. 906, § 63.1-274.5; 1991, cc. 545, 588; 2002, c. 747.

**§ 63.2-1920. Department may order exchange of financial information**

The Department may order the obligor and payee to notify each other at specified intervals of current gross income as defined in § 20-108.2 and any other pertinent information which may affect child support amounts. For good cause shown, the Department may order that such information be provided to the Department and made available to the parties for inspection in lieu of the parties' providing such information directly to each other.

1988, c. 907, § 63.1-264.1; 2002, c. 747.

**§ 63.2-1921. Authority to initiate reviews of certain orders**

A. The Department may, pursuant to this chapter and in accordance with § 20-108.2, initiate a review of the amount of support ordered by any court. If a material change in circumstances has occurred, the Department shall report its findings and a proposed modified order to the court

which entered the order or the court having current jurisdiction. Notice of each review shall be served on the nonrequesting party (i) in accordance with the provisions of § 8.01-296, 8.01-327, or 8.01-329, (ii) by certified mail, return receipt requested, (iii) by electronic means, or (iv) by the nonrequesting party executing a waiver. Either party may request a hearing on the proposed modified order by filing a request with such court within 30 days of receipt of notice by the requesting party. Unless a hearing is requested within the time limits, no hearing shall be required and the court shall enter the modified order, which shall be effective from the date that notice of such review was served on the nonrequesting party. The court shall modify any prior court order, or schedule a hearing on its motion and so notify the parties and the Department. If a hearing is held, the Department shall have the burden of proof.

B. However, if the order being reviewed by the Department deviated from the guidelines, when entered, based on one or more of the deviating factors set out in § 20-108.1 and the Department determines that there has been a material change in circumstances, the procedure set forth in subsection A shall not apply and the Department shall schedule a hearing with the court which entered the order or the court having current jurisdiction.

C. A material change in circumstances shall be deemed to have occurred if the difference between the existing child support award and the amount which would result from application of the guidelines is at least 10 percent of the existing child support award but not less than $25 per month.

1994, c. 795, § 63.1-252.2; 1996, c. 889; 1998, c. 885; 2002, c. 747; 2016, c. 29.

### § 63.2-1922. Commissioner may set amount of debt accrued where no court order or final divorce decree

The Commissioner may, at any time, consistent with the provisions of § 63.2-1918, set or reset the amount of the debt accrued or accruing, due and owing under this chapter in those cases where there has been no court order for support or final decree of divorce ordering support entered.

1974, c. 413, § 63.1-264; 1977, c. 538; 1985, c. 488; 1988, cc. 906, 907; 2002, c. 747.

## Article 5 - INCOME WITHHOLDING

### § 63.2-1923. Immediate withholding from income; exception; notices required

A. Every administrative support order directing a noncustodial parent to pay child or child and spousal support shall provide for immediate income withholding from the noncustodial parent's income as defined in § 63.2-1900 of an amount for current support plus an amount to be applied toward liquidation of arrearages, if any, unless the obligor and the Department, on behalf of the obligee, agree to a written alternative payment arrangement, or good cause is shown. Good cause shall be based upon a written determination that, and explanation by the Department of why, implementing immediate withholding would not be in the best interests of the child. The total amount withheld shall not exceed the maximum amount permitted under § 34-29.

B. The order shall include, but not be limited to, notice (i) of the amount that will be withheld, (ii) that the withholding applies to any current or subsequent period of employment, (iii) of the right to contest whether a duty of support is owed and the information specified in the administrative order is correct, (iv) that a written request to appeal the withholding shall be made to the Department within 10 days of receipt of the notice, and (v) of the actions that will be taken by the Department if an appeal is noted, which shall include the opportunity to present his objections to the administrative hearing officer at a hearing held pursuant to § 63.2-1942. Upon service of the order on the employer by first-class or certified mail, by electronic means, or by service in accordance with the provisions of § 8.01-296, 8.01-327 or 8.01-329, the employer shall deliver the order to the noncustodial parent.

C. The noncustodial parent's employer shall be issued by first-class or certified mail or by electronic means, including facsimile transmission, an administrative order for withholding of income which shall conform to § 20-79.3. The rights and responsibilities of an employer with respect to such orders are set out in § 20-79.3.

D. Administrative orders for withholding from income shall be promptly terminated or modified by the Department when (i) the obligation to support has been satisfied and arrearages have been paid, (ii) the whereabouts of the child or child and custodial parent become unknown, or (iii) modification is appropriate because of a change in the amount of the obligation.

1988, c. 906, § 63.1-258.1; 1990, c. 896; 1991, c. 334; 1995, c. 714; 1997, cc. 648, 663; 1998, c. 727; 2002, c. 747; 2003, c. 469; 2015, c. 52; 2016, c. 29.

**§ 63.2-1924. Withholding from income; default of administrative or judicial support order; notices required; priorities; orders from other states**

A. As part of every administrative support order directing a noncustodial parent to pay child or child and spousal support or by separate order at any time thereafter, provision shall be made for withholding from the income of the noncustodial parent the amount of the withholding order plus an amount to be applied toward liquidation of arrearages if the noncustodial parent fails to make payments in an amount equal to the support payable for one month. The total amount withheld shall not exceed the maximum amount permitted under § 34-29.

B. Upon default of an administrative or judicial support order, the Department shall serve notice on the noncustodial parent's employer of the delinquency in accordance with the provisions of § 8.01-296, 8.01-327 or 8.01-329 or by certified mail or electronic means, including facsimile transmission, for delivery to the noncustodial parent. The notice shall inform the noncustodial parent (i) of the amount that will be withheld, (ii) that the withholding applies to any current or subsequent period of employment, (iii) of the right to contest but that the only basis for contesting the withholding is a mistake of fact, (iv) that a written request to contest the withholding must be made to the Department within 10 days of receipt of the notice, (v) of the actions that will be taken by the Department if a request to contest is noted, which shall include the opportunity to

present his objections, which shall be limited to a mistake of fact, to the administrative hearing officer at a hearing held pursuant to § 63.2-1942, (vi) that a determination on the contest will be made no later than 45 days from the date of service of such notice, and (vii) that payment of overdue support upon receipt of the required notice shall not be a bar to the implementation of withholding.

C. The noncustodial parent's employer shall be issued by first-class or certified mail or by electronic means, including facsimile transmission, an administrative order for withholding of income that shall conform to § 20-79.3. The rights and responsibilities of an employer with respect to such orders are set out in § 20-79.3.

D. The Department shall have the authority in the issuance of an administrative order under § 20-79.3, based on an existing court order, to convert the terms of payment to conform with the obligor's pay period interval. The Department shall utilize the conversion formula established by the Committee on District Courts.

E. Administrative orders for withholding from income shall be promptly terminated or modified by the Department when (i) the obligation to support has been satisfied and arrearages have been paid, (ii) the whereabouts of the child or child and custodial parent become unknown, or (iii) modification is appropriate because of a change in the amount of the obligation.

F. If a court of competent jurisdiction or the agency operating pursuant to an approved state plan under Sections 452 and 454 of the Social Security Act, as amended, in any state, territory of the United States or the District of Columbia has ordered a person to pay child or child and spousal support, upon notice and hearing as provided in this section, the Department shall issue an order, conforming to § 20-79.3, to the noncustodial parent's employer in this Commonwealth to withhold from the income of the noncustodial parent pursuant to a foreign support order in the same manner as provided in this section for administrative orders originating in this Commonwealth. Similar orders of the Department may be enforced in a similar manner in such other state, territory or district.

1985, c. 488, § 63.1-250.3; 1986, c. 594; 1987, cc. 640, 658, 706; 1988, c. 906; 1990, c. 896; 1995, c. 714; 1997, cc. 648, 663; 1998, c. 727; 2002, c. 747; 2003, c. 469; 2015, c. 52; 2016, c. 29.

**§ 63.2-1924.1. Health care coverage; National Medical Support Notice**

A. All child support orders established and enforced pursuant to this title shall include a provision for health care coverage of dependent children. The Department shall use the National Medical Support Notice (NMSN) to enforce the provision of health care coverage through an employment-related group health plan pursuant to a child support order if available at a reasonable cost, as that term is defined in § 63.2-1900, unless a court or administrative order stipulates alternative health care coverage to employer-based coverage.

B. The Department shall transfer the NMSN to employers within two business days following the date of entry into the State Directory of New Hires of an employee who is obligated to pay child

support or to provide health care coverage pursuant to this title. Employers shall transfer the NMSN to the appropriate group plan providing the health care coverage for each eligible child (excluding the severable Notice to Withhold for Health Care Coverage directing the employer to withhold any mandatory employee contributions to the plan) within twenty business days after the date of the NMSN. The Department, in consultation with the custodial parent, shall promptly select from available plan options when the plan administrator reports that there is more than one option available under the plan.

C. Employers shall withhold any obligation of the employee for employee contribution necessary for coverage of each eligible child and send any amount withheld directly to the plan. An employee obligated for contribution necessary for coverage may contest the withholding based on a mistake of fact. If the employee contests the withholding, the employer shall continue to withhold the obligation necessary for coverage until the employer receives notice that the contest is resolved in favor of the employee.

D. Employers shall notify the Department promptly whenever the employment of a parent ordered to provide health care coverage is terminated in the same manner as required for income withholding pursuant to § 20-79.3. The Department shall promptly notify an employer when there is no longer a current order for health care coverage in effect for which the Department is responsible.

2002, c. 844, § 63.1-250.3:1; 2009, c. 713.

**§ 63.2-1925. Certain amount of income that may be withheld by lien or order**

Whenever a support lien, order to withhold and deliver property or order for withholding of income is served upon any person, firm, corporation, association, political subdivision or department of this Commonwealth asserting a support debt against income and there is any such income in the possession of such person, then that person shall withhold from the disposable income as defined in § 63.2-100 (i) the amount stated in the lien, the order to withhold and deliver property, or the order for withholding of income; or (ii) the maximum amount permitted under § 34-29, whichever is less. The order shall show the maximum percentage of disposable income which may be withheld pursuant to § 34-29. The lien or order to withhold and deliver shall continue to operate and require such person, firm, corporation, association, political subdivision, or department of this Commonwealth to withhold the nonexempt portion of income at each succeeding income disbursement interval until the entire amount of the support debt stated in the lien has been withheld. The order for withholding of income continues until further notice by first-class or certified mail, return receipt requested, or by electronic means from the Department is received by the employer.

1974, c. 413, § 63.1-257; 1976, c. 357; 1978, c. 564; 1982, c. 402; 1985, c. 488; 1998, c. 727; 2002, c. 747; 2003, c. 469; 2016, c. 29.

**§ 63.2-1926. Withholding pursuant to foreign support order**

If a court of competent jurisdiction or the agency operating pursuant to an approved state plan under Sections 452 and 454 of the Social Security Act, as amended, in any state, territory of the United States or the District of Columbia has ordered a person to pay child or child and spousal support, upon notice and hearing as provided in this section, the Department shall order such non-custodial parent's employer in this Commonwealth to withhold from the earnings of the non-custodial parent pursuant to a foreign support order in the same manner as provided in §§ 63.2-1923 and 63.2-1924.

1988, c. 906, § 63.1-258.2; 2002, c. 747.

## Article 6 - ENFORCEMENT REMEDIES

### § 63.2-1927. Assertion of lien; effect

Ten days after service of the notice containing the proposed administrative support order as provided in § 63.2-1916, or immediately upon receipt by the Department of a court order or foreign support order, a lien may be asserted by the Commissioner upon the real or personal property of the debtor. The claim of the Department for a support debt, not paid when due, shall be a lien when docketed against all property of the debtor in the county or city where docketed with priority of a secured creditor. The Department's lien shall take priority over all other debts and creditors under state law of such debtor including the proceeds or anticipated proceeds of a personal injury or wrongful death award or settlement except that the Department's lien shall be inferior to those liens created under § 8.01-66.2 or § 8.01-66.9, any statutory right of subrogation accruing to a health insurance provider, and the lien of the attorney representing the injured person in the personal injury or wrongful death action. However, the lien of the Department shall be subordinate to the lien of any prior mortgagee. The Department shall have the sole authority to negotiate settlement of its liens. Settlement of the Department's support liens does not affect the remaining support arrearages. This lien shall be separate and apart from, and in addition to, any other lien created by, or provided for, in this title. Such order, when an abstract thereof is docketed with the circuit court, shall have the same effect as a docketed abstract of judgment from another Virginia court.

Whenever a support lien has been filed and there is in the possession of any person, firm, corporation, association, political subdivision or department of the Commonwealth having notice of such lien, any property which may be subject to the support lien, such property shall not be paid over, released, sold, transferred, encumbered or conveyed, except as provided for by the exemptions contained in § 63.2-1933, unless a written release or waiver signed by the Commissioner has been delivered to such person, firm, corporation, association, political subdivision or department of the Commonwealth or unless a determination has been made in a hearing pursuant to § 63.2-1916 or by a court ordering release of such support lien on the basis that no debt exists or that the debt has been satisfied.

1974, c. 413, § 63.1-254; 1976, c. 357; 1988, c. 906; 2002, c. 747; 2003, cc. 929, 942.

**§ 63.2-1928. Service of lien**

The Commissioner may at any time after the filing of a support lien serve a copy of said lien upon any person, firm, corporation, association, political subdivision or department of the Commonwealth in possession of earnings, or deposits or balances held in any bank account of any nature that are due, owing, or belonging to such debtor. Such support lien shall be served upon the person, firm, corporation, association, political subdivision or department of the Commonwealth either in the manner prescribed for the service of warrant in a civil action or by certified mail, return receipt requested. At any time after a support lien has been filed, the Director may notify consumer credit reporting agencies that the lien has been filed. No lien filed under § 63.2-1927 shall have any effect against earnings or bank deposits or balances unless it states the amount of the support debt accrued and unless service upon such person, firm, corporation, association, political subdivision or department of the Commonwealth in possession of earnings or bank accounts, deposits or balances is accomplished pursuant to this section.

1974, c. 413, § 63.1-255; 1976, c. 357; 1988, c. 906; 2002, c. 747.

**§ 63.2-1929. Orders to withhold and to deliver property of debtor; issuance and service; contents; right to appeal; answer; effect; delivery of property; bond to release; fee; exemptions**

A. After notice containing an administrative support order has been served or service has been waived or accepted, an opportunity for a hearing has been exhausted and a copy of the order furnished as provided for in § 63.2-1916, or whenever a court order for child or child and spousal support has been entered, the Commissioner is authorized to issue to any person, firm, corporation, association, political subdivision or department of the Commonwealth, orders to withhold and to deliver property of any kind including, but not restricted to, income of the debtor, when the Commissioner has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision or department of the Commonwealth, property that is due, owing, or belonging to such debtor. The orders to withhold and to deliver shall take priority over all other debts and creditors under state law of such debtor including the proceeds or anticipated proceeds of a personal injury or wrongful death award or settlement except that the Department's lien shall be inferior to those liens created under § 8.01-66.2 or § 8.01-66.9, any statutory right of subrogation accruing to a health insurance provider, and the lien of the attorney representing the injured person in the personal injury or wrongful death action. However, orders to withhold and to deliver shall not take priority with respect to a prior payroll deduction or income withholding order pursuant to §§ 20-79.1, 20-79.2, 63.2-1923 or § 63.2-1924. The Department shall have the sole authority to negotiate settlement of its liens. Settlement of the Department's support liens does not affect the remaining support arrearages.

B. The order to withhold shall also be served upon the debtor within a reasonable time thereafter, and shall state the amount of the support debt accrued. The order shall state in summary the terms of §§ 63.2-1925 and 63.2-1930 and shall be served in the manner prescribed for the service of a warrant in a civil action, by certified mail, return receipt requested, or by electronic means.

The order to withhold shall advise the debtor that this order has been issued to cause the property of the debtor to be taken to satisfy the debt and advise of property that may be exempted from this order. The order shall also advise the debtor of a right to appeal such order based upon a mistake of fact and that if no appeal is made within 10 days of being served, his property is subject to be taken.

C. If the debtor believes such property is exempt from this debt, within 10 days of the date of service of the order to withhold, the debtor may file an appeal to the Commissioner stating any exemptions that may be applicable. If the Commissioner receives a timely appeal, a hearing shall be promptly scheduled before a hearing officer upon reasonable notice to the obligee. The Commissioner may delegate authority to conduct the hearing to a duly qualified hearing officer who shall consider the debtor's appeal. Action by the Commissioner under the provisions of this chapter to collect such support debt shall be valid and enforceable during the pendency of any appeal.

The decision of the hearing officer shall be in writing and shall set forth the debtor's rights to appeal an adverse decision of the hearing officer pursuant to § 63.2-1943. The decision shall be served upon the debtor in accordance with the provisions of § 8.01-296, 8.01-327 or 8.01-329, mailed to the debtor at his last known address by certified mail, return receipt requested, or provided by electronic means or service may be waived. A copy of such decision shall also be provided to the obligee. Such decision shall establish whether the debtor's property is exempt under state or federal laws and regulations.

D. Any person, firm, corporation, association, political subdivision or department of the Commonwealth upon whom service has been made is hereby required to answer such order to withhold within 10 days, exclusive of the day of service, under oath and in writing, and shall file true answers to the matters inquired of therein. In the event there is in the possession of any such person, firm, corporation, association, political subdivision or department of the Commonwealth, any property that may be subject to the claim of the Department, such property shall be withheld immediately upon receipt of the order to withhold, together with any additional property received by such person, firm, corporation, association, political subdivision, or department of the Commonwealth valued up to the amount of the order until receipt of an order to deliver or release. The property shall be delivered to the Commissioner upon receipt of an order to deliver; however, distribution of the property shall not be made during pendency of all appeals. Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, or association, political subdivision or department of the Commonwealth subject to withdrawal by the debtor, such money shall be delivered by remittance payable to the order of the Treasurer of Virginia. The person, firm, corporation, political subdivision or department of the Commonwealth herein specified shall be entitled to receive from such debtor a fee of $5 for each answer or remittance on account of such debtor. The foregoing is subject to the exemptions contained in §§ 63.2-1925 and 63.2-1933.

E. Delivery to the Commissioner shall serve as full acquittance and the Commonwealth warrants and represents that it shall defend and hold harmless for such actions persons delivering money or property to the Commissioner pursuant to this chapter.

F. An order issued to an employer for withholding from the earnings of an employee pursuant to this section shall conform to § 20-79.3. The rights and obligations of an employer with respect to the order are set out in § 20-79.3.

1974, c. 413, § 63.1-256; 1975, cc. 54, 311; 1976, c. 357; 1977, c. 662; 1980, c. 243; 1983, c. 481; 1984, c. 652; 1985, c. 488; 1987, c. 640; 1988, c. 906; 1990, cc. 896, 950; 1992, c. 716; 1998, c. 727; 2002, c. 747; 2003, cc. 929, 942; 2016, c. 29.

**§ 63.2-1930. Civil liability upon failure to comply with lien, order, etc**

Should any person, firm, corporation, association, political subdivision or department of this Commonwealth fail to answer an order to withhold and deliver within the time prescribed herein, or fail or refuse to deliver property pursuant to said order, or after actual notice of filing of a support lien, pay over, release, sell, transfer, or convey real or personal property subject to a support lien to or for the benefit of the debtor or any other person, or fail or refuse to surrender upon demand property distrained under § 63.2-1933 or fail or refuse to honor a voluntary assignment of wages under § 63.2-1945 presented by the Commissioner, such person, firm, corporation, association, political subdivision or department of this Commonwealth shall be liable to the Department in an amount equal to 100 percent of the value of the debt which is the basis of the lien, order to withhold and deliver, distraint, or an income withholding order or voluntary assignment of wages. A noncustodial parent's employer issued an income withholding order by first-class mail or electronic means pursuant to § 63.2-1923 or 63.2-1924 shall not be liable to the Department unless the Department shows that such employer had actual notice of the withholding order.

1974, c. 413, § 63.1-258; 1976, c. 357; 1985, c. 488; 2002, c. 747; 2003, c. 469; 2016, c. 29.

**§ 63.2-1931. Effect of service on banks, savings institutions, etc**

Service of a lien or orders to withhold and deliver or any other notice or document authorized by this chapter on the main office or headquarters or registered agent of any bank, savings institution or other financial institution or broker-dealer as defined in § 13.1-501 or any other place designated by such financial institution or broker-dealer shall be effective as to any accounts, credits or other personal property (excluding property held in a safe-deposit box) of the noncustodial parent held by that institution or broker-dealer. The bank, savings institution, financial institution or broker-dealer may accept service or treat service as valid even though made at a point other than those specified above.

Within 45 days of receipt of an answer from any bank, savings institution or other financial institution or broker-dealer indicating that a support debtor may have an interest in funds in a joint account, the Department shall serve notice of the order to withhold on all joint account holders at the address for each account holder as provided by the bank, savings institution or other financial

institution or broker-dealer in the same manner as service upon the support debtor. A copy of the notice shall be served on the financial institution or broker-dealer by certified mail, return receipt requested. Each account holder may appeal the action to a hearing officer as provided in § 63.2-1929. However, the issue to be determined by the hearing officer is limited to whether the support debtor has any interest in the joint account which is being held based on the support debtor's contribution to the account. Upon satisfactory proof that the support debtor has no interest in the joint account, the Department shall release the order to withhold. Upon receipt of the copy of the notice to the joint account holders, the financial institution or broker-dealer shall treat the initial order to withhold as continuing in effect over the entire property being withheld until a release or order to deliver is served by the Department or until the ninety-day period set forth in the following paragraph expires. If the financial institution or broker-dealer does not receive a copy of the notice to the joint account holders within 45 days from delivery of its answer, it may treat the order to withhold as released.

Upon the determination that the support debtor has some interest in the joint account, the Department shall initiate a petition in the general district court or in the circuit court, if the joint account and the amount claimed against the support debtor each exceed $10,000, for the jurisdiction in which the support debtor or any joint account owner resides in order that the court may make a determination of the extent of the interest of the support debtor in the joint account, based on the amount the support debtor contributed to the account. If the support debtor and all account owners are nonresidents, venue shall be where the support obligee resides or where the property is located. In cases where the joint account is owned by persons married to each other, the funds in the account shall belong to them equally unless there is clear and convincing evidence otherwise. The Department shall serve a copy of the petition on the financial institution or broker-dealer by certified mail, return receipt requested. If the financial institution or broker-dealer does not receive a copy of the petition within ninety days of receipt of the notice to the joint account holders, it may treat the order to withhold as released.

Notwithstanding service or receipt of such order of support, the financial institution may pay any check deposited with it or another financial institution on or before the date of service or receipt of the order of support on it.

1988, cc. 795, 906, § 63.1-260.1; 1990, c. 950; 1992, c. 111; 2002, c. 747; 2009, c. 125.

**§ 63.2-1932. Data exchange agreements authorized; immunity**

The Commissioner is authorized and shall, as feasible, enter into agreements with financial institutions doing business in the Commonwealth to develop and operate, in conjunction with such financial institutions, a data match system using automated data exchanges to the maximum extent feasible. Pursuant to a data match system, a financial institution shall provide on a periodic basis, but no more frequently than every three months, the account title, record address, social security number or other taxpayer identification number, for any person in arrears in the

payment of child support who is identified by the Department in the request by social security number or other taxpayer identification number.

Any such agreement shall provide for the following:

1. The financial institution shall be obligated to match only those accounts for which a social security number or taxpayer identification number is provided by the Department, and shall have no obligation to match or identify any account based on a person's name or any other identifying information;

2. The financial institution shall provide the account title, record address, social security number or taxpayer identification number for any account matching the social security number and taxpayer identification number provided by the Department. It shall be the Department's responsibility to determine whether such account is an account subject to a lien, or order to withhold and deliver in accordance with the provisions of this chapter;

3. The financial institution shall be given a reasonable time in which to respond to each data match request, based upon the capabilities of the financial institution to handle the data match system, but in no event less than thirty days; and

4. The financial institution shall have no obligation to hold, encumber, or surrender assets in any account based on a match until it is served with a lien or order to withhold and deliver in accordance with the provisions of this chapter.

The Department is authorized to pay a reasonable fee to a financial institution for conducting the data match, not to exceed the actual costs incurred by such financial institution and may assess and recover actual costs incurred from noncustodial parents identified as a result of the data match.

A financial institution providing information in accordance with this section shall not be liable to any account holder or other person for any disclosure of information to the Department, for encumbering or surrendering any assets held by such financial institution in response to a lien or order to withhold and deliver issued by the Department, or for any other action taken pursuant to this section, including individual or mechanical errors, provided such action does not constitute gross negligence or willful misconduct.

For purposes of this section, "account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, share account, share draft account or money market mutual fund account maintained in this Commonwealth.

1997, cc. 796, 895, § 63.1-260.3; 2002, c. 747.

**§ 63.2-1932.1. Automated administrative enforcement in interstate cases**

A. The Department shall use high-volume automated administrative enforcement, to the same extent as used for intrastate cases, in response to a request made by another state to enforce support orders, and shall promptly report the results of such enforcement procedure to the requesting

state. For purposes of this section, "high volume automated administrative enforcement" in interstate cases means, on the request of another state, the identification by the Department, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in other states, and the seizure of such assets by the Department through levy or other appropriate processes.

B. The Department may, by electronic or other means, transmit to another state a request for assistance in enforcing child support orders through high-volume automated administrative enforcement. The request shall (i) include such information as will enable the state to which the request is transmitted to compare the information about the cases to the information in the data bases of the state; and (ii) shall constitute a certification by the Department of the amount of support in arrears and of the Department's compliance with all procedural due process requirements applicable to each case.

C. If the Department provides assistance to another state pursuant to this section, neither the Department nor the state shall consider the case to be transferred to the caseload of the other state.

D. The Department shall maintain records of (i) the number of such requests for assistance pursuant to this section; (ii) the number of cases for which the Department collected support in response to such a request; and (iii) the amount of such collected support.

2002, c. 112, § 63.1-260.4.

**§ 63.2-1933. Distraint, seizure and sale of property subject to liens**

Whenever a support lien has been filed pursuant to § 63.2-1927, the Commissioner may collect the support debt stated in such lien by distraint, seizure and sale of the property subject to such lien. The Commissioner shall give notice by certified mail, return receipt requested, or electronic means to the debtor and by certified mail, return receipt requested, to any person known to have or claim an interest therein of the general description of the property to be sold and the time and place of sale of such property. A notice specifying the property to be sold shall be posted in at least two public places in the jurisdiction wherein the distraint has been made. The time of sale shall not be less than 10 nor more than 20 days from the date of posting of such notices. Such sale shall be conducted by the Commissioner, who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum reasonable price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the price so fixed, the Commissioner may declare such property to be purchased by the Department for such price, or may conduct another sale of such property pursuant to the provisions of this section. In the event of sale, the debtor's account shall be credited with the amount for which the property has been sold. Property acquired by the Department as herein prescribed may be sold by the Commissioner at public or private sale, and the amount realized shall be placed in the state general fund to the credit of the Department. In all cases of sale, as aforesaid,

the Commissioner shall issue a bill of sale or a deed to the purchaser and such bill of sale or deed shall be prima facie evidence of the right of the Commissioner to make such sale and conclusive evidence of the regularity of his proceeding in making the sale and shall transfer to the purchaser all right, title, and interest of the debtor in such property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the Department, shall be first applied by the Commissioner to reimbursement of the costs of distraint and the sale, and thereafter in satisfaction of the delinquent account. Any excess which shall thereafter remain in the hands of the Commissioner shall be refunded to the debtor. Sums so refundable to a debtor may be subject to seizure or distraint by any taxing authority of the Commonwealth or its political subdivisions or by the Commissioner for new sums due and owing subsequent to the subject proceeding. Except as specifically provided in this chapter, there shall be exempt from attachment, distraint, seizure, execution and sale under this chapter such property as is exempt therefrom under the laws of this Commonwealth.

1974, c. 413, § 63.1-261; 1975, cc. 311, 596; 1976, c. 357; 2002, c. 747; 2016, c. 29.

**§ 63.2-1934. Action for foreclosure of lien; satisfaction**

Whenever a support lien has been filed, an action in foreclosure of lien upon real or personal property may be brought in the circuit court of the jurisdiction wherein such real or personal property is or was located and the lien was filed. Judgment if rendered in favor of the Department shall be for the amount due, with costs, and the court shall allow, as part of the costs, the moneys paid for making and filing the claim of lien, and a reasonable attorney's fee. The court shall order any property upon which any lien provided for by this chapter is established, to be sold by the sheriff of the proper jurisdiction to satisfy the lien and costs. The payment of the lien debt, costs and reasonable attorney's fees, at any time before sale, shall satisfy the judgment of foreclosure. Where the net proceeds of sale upon application to the debt claimed do not satisfy the debt in full, the Department shall have judgment over any deficiency remaining unsatisfied and further levy upon other property of the judgment debtor may be made under the same execution. In all sales contemplated under this section, advertising of notice shall only be necessary for two weeks in a newspaper published in the jurisdiction where such property is located, and if there be no newspaper therein, then in the most convenient newspaper having a circulation in such jurisdiction. Remedies provided for herein are alternatives to remedies provided for in other sections of this chapter.

1974, c. 413, § 63.1-262; 1976, c. 357; 1988, c. 906; 2002, c. 747.

**§ 63.2-1935. Satisfaction of lien after foreclosure proceedings instituted; redemption**

Any person owning real property, or any interest in real property, against which a support lien has been filed and foreclosure instituted, shall have the right to pay the amount due, together with expenses of the proceedings and reasonable attorney fee to the Commissioner and upon such payment the Commissioner shall restore said property to him and all further proceedings in such foreclosure action shall cease. Such person shall also have the right within 240 days after sale of

property foreclosed under § 63.2-1934 to redeem said property by making payment to the purchaser in the amount paid by the purchaser plus interest thereon at the rate of six per centum per annum.

1974, c. 413, § 63.1-263; 1976, c. 357; 2002, c. 747.

**§ 63.2-1936. Procedures for posting security, bond or guarantee to secure payment of overdue support**

The Department shall require, if feasible and consistent with guidelines established by the Department, that the noncustodial parent post security or bond or give some guarantee to secure overdue payments. Advance notice shall be sent to the noncustodial parent setting forth (i) the amount of the delinquency, (ii) the proposed action to be taken by the Department, (iii) the method available for contesting the impending action and (iv) that only a "mistake of fact" as defined in § 63.2-1900 may be contested.

1986, c. 594, § 63.1-250.4; 1988, c. 906; 2002, c. 747.

**§ 63.2-1937. Applications for occupational or other license to include social security or control number; suspension upon delinquency; procedure**

Every initial application for or application for renewal of a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth pursuant to Titles 22.1, 38.2, 46.2 or 54.1 or any other provision of law shall require that the applicant provide his social security number or a control number issued by the Department of Motor Vehicles pursuant to § 46.2-342.

Upon 30 days' notice to an obligor who (i) has failed to comply with a subpoena, summons or warrant relating to paternity or child support proceedings or (ii) is alleged to be delinquent in the payment of child support by a period of 90 days or more or for $5,000 or more, an obligee or the Department on behalf of an obligee, may petition either the court that entered or the court that is enforcing the order for child support for an order suspending any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation, or recreational activity issued to the obligor by the Commonwealth pursuant to Titles 22.1, 29.1, 38.2, 46.2 or 54.1 or any other provision of law. The notice shall be sent in accordance with the provisions of § 8.01-296, 8.01-327, or 8.01-329, by certified mail, with proof of actual receipt, or by electronic means. The notice shall specify that (a) the obligor has 30 days from the date of receipt to comply with the subpoena, summons or warrant or pay the delinquency or to reach an agreement with the obligee or the Department to pay the delinquency and (b) if compliance is not forthcoming or payment is not made or an agreement cannot be reached within that time, a petition will be filed seeking suspension of any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation, or recreational license issued by the Commonwealth to the obligor.

The court shall not suspend a license, certificate, registration or authorization upon finding that an alternate remedy is available to the obligee or the Department that is likely to result in collection of the delinquency. Further, the court may refuse to order the suspension upon finding that (1) suspension would result in irreparable harm to the obligor or employees of the obligor or would not result in collection of the delinquency or (2) the obligor has made a demonstrated, good faith effort to reach an agreement with the obligee or the Department.

If the court finds that the obligor is delinquent in the payment of child support by 90 days or more or in an amount of $5,000 or more and holds a license, certificate, registration or other authority to engage in a business, trade, profession or occupation or recreational activity issued by the Commonwealth, it shall order suspension. The order shall require the obligor to surrender any license, certificate, registration or other such authorization to the issuing entity within 90 days of the date on which the order is entered. If at any time after entry of the order the obligor (A) pays the delinquency or (B) reaches an agreement with the obligee or the Department to satisfy the delinquency within a period not to exceed 10 years and makes at least one payment, representing at least five percent of the total delinquency or $500, whichever is greater, pursuant to the agreement, or (C) complies with the subpoena, summons or warrant or reaches an agreement with the Department with respect to the subpoena, summons or warrant, upon proof of payment or certification of the compliance or agreement, the court shall order reinstatement. Payment shall be proved by certified copy of the payment record issued by the Department or notarized statement of payment signed by the obligee. No fee shall be charged to a person who obtains reinstatement of a license, certificate, registration or authorization pursuant to this section.

1994, c. 764, § 63.1-263.1; 1997, cc. 794, 857, 898; 2002, c. 747; 2016, c. 29.

**§ 63.2-1938. Commissioner may release lien or order or return seized property**

The Commissioner may at any time release a support lien, or order to withhold and deliver, on all or part of the property of the debtor, or return seized property without liability, if assurance of payment is deemed adequate by the Commissioner, or if such action will facilitate the collection of the debt, but such release or return shall not operate to prevent future action to collect from the same or other property.

1974, c. 413, § 63.1-265; 1976, c. 357; 2002, c. 747.

**§ 63.2-1939. Commissioner may make demand, file and serve liens, when payments appear in jeopardy**

If the Commissioner finds that the collection of any support debt based upon subrogation to or authorization to enforce the amount of support ordered by any court order or decree of divorce is in jeopardy, he may make demand under § 63.2-1916 for immediate payment of the support debt. Upon failure or refusal immediately to pay such support debt, he may file and serve liens pursuant to §§ 63.2-1927 and 63.2-1928, without regard to the ten-day period provided for in § 63.2-1916. However, no further action under §§ 63.2-1929, 63.2-1933 and 63.2-1934 may be taken until the notice requirements of § 63.2-1916 are met.

1974, c. 413, § 63.1-266; 1976, c. 357; 1988, c. 906; 2002, c. 747.

**§ 63.2-1940. Reporting payment arrearage information to consumer credit reporting agencies**

The Division of Child Support Enforcement shall provide support payment arrearage information on noncustodial parents, as defined in § 63.2-100, to consumer credit reporting agencies. Advance notice shall be sent to the noncustodial parent of the proposed release of arrearage information. The notice shall include information on the procedures available to the noncustodial parent for contesting the accuracy of the arrearage information.

1988, c. 906, § 63.1-274.6; 1990, c. 836; 1991, cc. 545, 588; 1994, c. 665; 1997, cc. 796, 895; 2001, c. 573; 2002, c. 747.

**§ 63.2-1940.1. Publishing a most wanted delinquent parent list; coordinated arrests**

The Division of Child Support Enforcement shall (i) publish at regular intervals a list of the most wanted delinquent parents as determined by the Commissioner together with arrearage information and other identifying information, including but not limited to, a photograph, occupation and last known address for the purpose of locating such delinquent parents and (ii) periodically conduct coordinated arrests of delinquent parents in conjunction with state and local criminal justice agencies pursuant to § 16.1-278.16.

2003, cc. 929, 942.

**§ 63.2-1941. Additional enforcement remedies**

In addition to its other enforcement remedies, the Division of Child Support Enforcement is authorized to:

1. Attach unemployment benefits through the Virginia Employment Commission pursuant to § 60.2-608 and workers' compensation benefits through the Workers' Compensation Commission pursuant to § 65.2-531; and

2. Suspend an individual's driver's license pursuant to § 46.2-320.1.

2002, c. 747; 2012, c. 829.

## Article 7 - ADMINISTRATIVE APPEAL

**§ 63.2-1942. Administrative hearing on notice of debt; withholdings; orders to withhold and deliver property to debtor; set-off debt collection**

The Commissioner may delegate authority to conduct any administrative hearing pursuant to this chapter to a duly qualified hearing officer. The hearing shall be held upon reasonable notice to the obligee and the debtor. In no event shall such hearing officer be legally competent to render a decision as to the validity of a court order or a defense of nonpaternity. A decision of the hearing officer shall be in writing and shall set forth the debtor's and payee's rights to appeal the decision of the hearing officer to the appropriate circuit or juvenile and domestic relations district court. The decision shall be served upon the debtor in accordance with the provisions of § 8.01-296,

8.01-327 or 8.01-329, mailed to the debtor at his last known address by certified mail, return receipt requested, or provided by electronic means, or the debtor may waive service of the decision at the time of the decision. A copy of such decision shall also be provided to the obligee. Such decision shall establish the liability of the debtor, if any, and the validity of the administrative action taken.

Action by the Commissioner under the provisions of this chapter to collect such support debt shall be valid and enforceable during the pendency of any appeal. The Commissioner may file and serve liens pursuant to §§ 63.2-1927 and 63.2-1928 during the pendency of the hearing or thereafter, whether or not appealed. Further action under § 63.2-1929 may be taken prior to any hearing or appeal. If the decision is in favor of the debtor, all money collected during the pendency of the appeal shall be returned to the debtor in accordance with procedures adopted by the Board.

1985, c. 488, § 63.1-267.1; 1986, c. 476; 1987, c. 640; 1988, c. 906; 1990, c. 896; 2002, c. 747; 2016, c. 29.

**§ 63.2-1943. Appeal from decision of hearing officer**

An appeal may be taken by filing a written notice of appeal with the clerk of the court having proper jurisdiction to review the decision of the hearing officer. The clerk shall send reasonable notice of such appeal, which shall include the date and time of the hearing, to the appellee or to the Department when, at the request of another state's child support agency, it is acting on behalf of a nonresident obligee. A nonresident obligee for whom the Department is acting is not required to appear at the hearing. Evidence relative to the support obligation may be taken from a non-resident obligee by deposition and presented by the Department at the hearing. Such appeal shall be taken within ten days of receipt of the hearing officer's decision.

From the decision of the hearing officer provided for in clause (iii) of subsection B of § 63.2-1924, and §§ 63.2-1916, 63.2-1929, and 63.2-1942 there shall be an appeal de novo to the juvenile and domestic relations district court of the jurisdiction wherein the appellant resides. If the appellant is a nonresident, venue on appeal shall be where the appellee resides. If both the appellant and the appellee are nonresidents, venue shall be where the property of the obligor is located or where the place of business of the obligor's employer is located; if more than one venue is available, then the appellant shall elect the place of venue.

An appeal shall be to the circuit court with respect to determinations under the Setoff Debt Collection Act pursuant to Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1 concerning state income tax overpayments and with respect to federal income tax set-off actions.

1984, c. 652, § 63.1-268.1; 1987, c. 640; 1988, c. 906; 1990, c. 896; 1991, c. 183; 2002, c. 747.

## Article 8 - ADMINISTRATIVE REMEDIES

**§ 63.2-1944. Employee debtor rights protected; limitation**

No employer shall discharge an employee for reason that a voluntary assignment of earnings under § 63.2-1945 has been presented in settlement of a support debt or that a support lien or order to withhold and deliver has been served against such employee's earnings.

1974, c. 413, § 63.1-271; 1976, c. 357; 1977, c. 662; 1985, c. 488; 1986, c. 594; 2002, c. 747.

**§ 63.2-1945. Assignment of earnings to be honored; inapplicability of § 40.1-31**

Any person, firm, corporation, association, political subdivision or department of the Commonwealth employing a person owing a support debt or obligation, shall honor an assignment of earnings to satisfy or retire a support debt or obligation of such person when ordered by the Commissioner by a payroll deduction order conforming to § 20-79.3. The rights and obligations of employees with respect to an order issued pursuant to this section are set out in § 20-79.3. Payment of moneys pursuant to an assignment of earnings presented by the Commissioner shall serve as full acquittance under any contract of employment, and the Commonwealth warrants and represents that it shall defend and hold harmless such action taken pursuant to such assignment of earnings. The Commissioner shall be released from liability for improper receipt of moneys under an assignment of earnings upon return of any moneys so received.

Any assignment of earnings presented under this section shall not be subject to the requirements set forth in § 40.1-31.

1974, c. 413, § 63.1-272; 1976, c. 357; 1980, c. 243; 1983, c. 481; 1984, c. 626; 1990, c. 896; 2002, c. 747.

**§ 63.2-1946. Virginia New Hire Reporting Center; State Directory of New Hires; reporting by employers**

A. The Virginia New Hire Reporting Center shall be operated under the authority of the Division of Child Support Enforcement. The Center shall operate and maintain the Virginia State Directory of New Hires. The Center is authorized to share information with the Virginia Employment Commission.

B. Each employing unit shall submit information concerning each newly hired employee, as defined in subsection H, to the Center within 20 days of the employment, as defined in § 60.2-212, of the newly hired employee. The information shall include the items required by § 453A of the Social Security Act, 42 U.S.C. § 653a, as amended.

C. Employers who transmit such reports magnetically or electronically shall, if necessary, report by two monthly transmissions not less than 12 days nor more than 16 days apart. Employers that have employees who are employed in two or more states and that transmit reports magnetically or electronically may comply by designating one state in which such employer has employees to which the employer will transmit the report and transmitting such report to such state. Such employers shall notify the federal Secretary of Health and Human Services in writing as to which state is designated for the purpose of sending reports and shall provide a copy of that notification to the Virginia New Hire Reporting Center.

D. Employers shall not report an employee of a state agency performing intelligence or counterintelligence functions, if the head of such agency has determined that such reporting could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

E. Information to be provided shall include only that information that is required by federal law. This information may be provided by mailing a copy of the employee's W-4 form, transmitting information magnetically or electronically in the prescribed format or by any other means determined by the Virginia New Hire Reporting Center to result in timely reporting. Within three business days after the date information regarding a newly hired employee is entered into the Virginia State Directory of New Hires, the Center shall furnish the information to the National Directory of New Hires established under § 453(i) of the Social Security Act, as amended.

F. The Division of Child Support Enforcement shall use information received pursuant to this section to locate individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations, and may disclose such information in accordance with existing law to carry out such purposes. The Division shall have access to information reported by employers pursuant to this section.

G. The Board shall have the authority to adopt regulations as necessary, consistent with the federal law and its implementing regulations, to administer this provision, including any exemptions and waivers which are needed to reduce unnecessary or burdensome reporting.

H. As used in this section, "newly hired employee" means an individual in employment, as defined in § 60.2-212, who (i) has not previously been in the employment of the employer or (ii) was previously in the employment of the employer but has been separated from such prior employment for at least 60 consecutive days.

1998, c. 108, § 63.1-274.11; 2002, c. 747; 2013, c. 329.

## Article 9 - LEGAL REPRESENTATION

### § 63.2-1947. Assistance by Office of the Attorney General

The attorney for the Commonwealth or other attorney who has responsibility for representing a local department and local board may, with the prior consent of the Attorney General, obtain the assistance of the Office of the Attorney General in the conduct of litigation arising under this chapter.

1988, c. 906, § 63.1-274.8; 2002, c. 747.

### § 63.2-1948. Payment by Department for legal services

Notwithstanding any provision of §§ 2.2-2814, 2.2-2815, 2.2-2816, 2.2-2823, 2.2-2824, 2.2-2825 or § 2.2-2826 to the contrary, whenever there shall be authorized by law an attorney for the Commonwealth, the Department may contract with the county or city or combination thereof for whom such attorney for the Commonwealth is authorized regarding the payment by the

Department of the salary, expenses, including secretarial services, and allowances or part thereof of such attorney, as shall be approved by the Compensation Board, for the entire time devoted to these duties. Any such contract may provide that the county, city or combination thereof shall pay such salary, expenses and allowances and that the Department shall reimburse such county or city therefor. The amount of such salary, expenses and allowances shall be set by the Compensation Board as provided by law.

Whenever there is in any county or city a county attorney or city attorney whose duties consist of legal services with respect to the provisions of this chapter, the Department may contract with such county or city regarding the duties of such county or city attorney and regarding payment by the Department of the salary, expenses, including secretarial services, and allowances or part thereof of such attorney for the time devoted to these duties. Any such contract may provide that the county or city shall pay such salary, expenses and allowances and that the Department shall reimburse such county or city therefor.

1988, c. 906, § 63.1-274.9; 2002, c. 747.

**§ 63.2-1949. Authority of city, county, or attorney for the Commonwealth to represent the Department**

In order to carry out the responsibilities of the Department imposed under this chapter, any city or county attorney is authorized to represent the Department in any civil proceeding necessary for the establishment, modification, enforcement, or collection of support obligations and any attorney for the Commonwealth is authorized to represent the Department in any civil or criminal proceeding necessary for the establishment, modification, enforcement, or collection of support obligations.

1988, c. 906, § 63.1-274.4; 1990, c. 85; 2002, c. 747.

**§ 63.2-1950. Child support enforcement privatized legal services**

The Attorney General shall provide and supervise legal services to the Division of Child Support Enforcement in child support enforcement cases to establish, obligate, enforce and collect child support. In addition to other methods of providing legal services as may be authorized by law, the Attorney General may contract with private attorneys to provide such services as special counsel pursuant to § 2.2-510 or to conduct programs to evaluate the costs and benefits of the privatization of such legal services. The compensation for such special and private counsel shall be paid out of funds received by the Division of Child Support Enforcement as provided by state and federal law and such reasonable attorney's fees as may be recovered. The Attorney General may also use collection agencies as may be necessary and cost-effective to pursue fully the recovery of all costs and fees authorized by § 63.2-1960 in proceedings to enforce child support obligations.

1996, c. 1054, § 63.1-249.1; 1998, cc. 494, 499; 2002, cc. 262, 747.

## Article 10 - FINANCIAL OPERATIONS

**§ 63.2-1951. Interest on support payments collected**

The Department shall pay interest to the payee as provided in this section on certain spousal or child support payments it collects which have been ordered by a court or established by administrative order to be paid to or through the Department to the payee and for which the Department has an assignment of rights or has been given an authorization to seek or enforce a support obligation as those terms are defined in §§ 63.2-100 and 63.2-1900. Such interest shall accrue, at the legal rate as established by § 6.2-301, on all support payments collected by the Department and paid to the payee more than thirty days following the end of the month in which the payment was received by the Department in nonpublic assistance cases. Interest shall be charged to the Department on such payments if the Department has an established case and if the obligor or payor provides identifying information including the Department case number or the noncustodial parent's name and correct social security number.

1987, c. 609, § 63.1-250.1:1; 2002, c. 747.

**§ 63.2-1952. Interest on debts due**

Interest at the judgment interest rate as established by § 6.2-302 on any arrearage pursuant to an order being enforced by the Department pursuant to this chapter shall be collected by the Commissioner except in the case of a minor obligor during the period of his minority. The Commissioner shall maintain interest balance due accounts. In accordance with § 63.2-1908.1, the Commissioner may compromise interest on debt owed to the Commonwealth for reimbursement of public assistance paid.

1974, c. 413, § 63.1-267; 1976, c. 357; 1995, c. 483; 2002, c. 747; 2015, c. 506.

**§ 63.2-1953. Disposition of funds collected as debts to Department**

Funds collected as a debt to the Department pursuant to the provisions of this chapter shall be placed in a special fund of the Department for use in the enforcement of the provisions of this chapter.

1975, c. 302, § 63.1-251.1; 1988, c. 906, § 63.1-274.1; 2002, c. 747.

**§ 63.2-1954. Distribution of collection**

Support payments received by the Department pursuant to one or more judicial or administrative orders, or a combination thereof, shall be allocated among the obligees under such orders with priority given to payment of the order for current support. Where payments are received pursuant to two or more orders for current support, the Department shall prorate the payments on the basis of any amounts due for current support under each such order. Upon satisfaction of any amounts due for current support, the Department shall prorate the remainder of the payments on the basis of accrued arrearages owed to the obligees under each such order. Payments received pursuant to federal tax refund offset shall be allocated pursuant to subsection h of 45 C.F.R. § 303.72.

All support payments received by the Department shall be distributed to the obligee within two business days of receipt, provided that sufficient information accompanies the payment or is otherwise available to the Department within that time to identify the obligee and the place to which

distribution should be made. The term "business day" means any day that is not a Saturday, Sunday, legal holiday or other day on which state offices are closed.

1992, c. 199, § 63.1-251.2; 1997, c. 562; 2002, c. 747; 2015, c. 52.

**§ 63.2-1954.1. Repealed**

Repealed by Acts 2010, c. 243, cl. 2, effective April 7, 2010.

**§ 63.2-1955. Distribution of collections from federal tax refund offsets**

Distribution of amounts collected by the Department as a result of an offset made under the Federal Tax Refund Offset Program (P.L. 97-35, as amended) to satisfy non-TANF past-due support from a federal tax refund based upon a joint return shall be made when the Department is notified that the unobligated spouse's proper share of the refund has been paid or 180 days following receipt of the offset, whichever is earlier. The Department shall establish procedures for the prompt refund of any incorrect offset amounts and the compensation of unobligated spouses for the payment of their shares to obligees.

1997, c. 653, § 63.1-251.4; 1998, c. 781; 2002, c. 747.

**§ 63.2-1956. Release of excess funds to debtor**

Whenever any person, firm, corporation, association, political subdivision or department of the Commonwealth has in its possession earnings, deposits, accounts, or balances in excess of the amount of the debt claimed by the Department plus $100, such person, firm, corporation, association, political subdivision or department of the Commonwealth may, without liability under this chapter, release such excess to the debtor.

1974, c. 413, § 63.1-259; 2002, c. 747.

**§ 63.2-1957. Unidentifiable moneys held in special account**

All moneys collected in fees, costs, attorney fees, interest payments, or other funds received by the Commissioner which are unidentifiable as to the support account against which they should be credited, shall be held in a special fund from which the Commissioner may make disbursement for any costs or expenses incurred in the administration or enforcement of the provisions of this chapter.

1974, c. 413, § 63.1-269; 1976, c. 357; 2002, c. 747.

**§ 63.2-1958. Charging off support debts as uncollectible**

Any support debt due the Department pursuant to § 63.2-1908 that the Commissioner deems uncollectible may be transferred from accounts receivable to a doubtful account, cease to be accounted as an asset, and discharged from its records.

1974, c. 413, § 63.1-270; 1975, c. 596; 1976, c. 357; 1988, c. 906; 1992, c. 716; 2002, c. 747.

**§ 63.2-1959. Department exempt from fees**

No filing or recording fees, court fees, or fees for service of process shall be required from the Department by any clerk, auditor, sheriff or other local officer for the filing of any actions or

documents authorized by this chapter or, for the service of any summons or other process in any action or proceeding authorized by this chapter.

1988, c. 906, § 63.1-274.7; 2002, c. 747.

**§ 63.2-1960. Recovery of certain fees and costs**

The Department shall have the authority to assess and recover from the noncustodial parent in proceedings to enforce child support obligations against the noncustodial parent, reasonable attorneys' fees. All such fees recovered in proceedings to collect child support arrearages shall be retained by the Department in a special fund for the support of the Division of Support Enforcement. The Department shall also have the authority to assess and recover costs in such cases. However, the Department shall not be entitled to recover attorneys' fees or costs in any case in which the noncustodial parent prevails.

The Department shall have the authority to assess and recover the actual costs of genetic testing against the noncustodial parent if paternity is established. Where an original test is contested and additional testing is requested, the Department may require advance payment by the contestant. The genetic testing costs shall be set at the rate charged the Department by the provider of genetic testing services.

The Department shall have the authority to assess and recover the actual costs of intercept programs from the noncustodial parent. The intercept programs' costs shall be set at the rate actually charged the Department.

The Department shall have the authority to assess and recover the actual costs of fees for service of process, and seizure and sale pursuant to a levy on a judgment in enforcement actions from the noncustodial parent.

The fees and costs that may be recovered pursuant to this section may be collected using any mechanism provided by this chapter.

1991, c. 390, § 63.1-274.10; 1996, cc. 746, 1054; 1997, cc. 792, 896; 2002, c. 747; 2005, c. 880.

# Subtitle VI - GRANT PROGRAMS AND FUNDS

## Chapter 20 - NEIGHBORHOOD ASSISTANCE ACT

**§§ 63.2-2000, 63.2-2001. Repealed**

Repealed by Acts 2008, c. 585, cl. 5.

**§ 63.2-2002. Repealed**

Repealed by Acts 2009, c. 851, cl. 4.

**§§ 63.2-2003 through 63.2-2006. Repealed**

Repealed by Acts 2008, c. 585, cl. 5.

## Chapter 21 - FAMILY AND CHILDREN'S TRUST FUND

### § 63.2-2100. Family and Children's Trust Fund; public purpose; exempt from taxation

A. There is hereby created the Family and Children's Trust Fund (the Trust Fund). The exercise of powers granted under this chapter shall be in all respects for the benefit of the citizens of the Commonwealth and for the support and development of services for the prevention and treatment of child abuse and neglect and violence within families. This goal shall be achieved through public and private collaboration.

B. The Trust Fund will be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter. Gifts, contributions, grants, devises, and bequests, whether personal or real property, and the income therefrom, accepted by the Trust Fund, shall be deemed to be gifts to the Commonwealth, which shall be exempt from all state and local taxes, and shall be regarded as the property of the Commonwealth for the purposes of all tax laws.

1986, c. 416, § 63.1-326; 2002, c. 747; 2012, cc. 803, 835; 2016, cc. 110, 627.

### § 63.2-2101. Members of Board; terms; vacancies; meetings

A. The Family and Children's Trust Fund shall be administered by a Board of Trustees. The Board of Trustees shall consist of fifteen members appointed by the Governor and subject to confirmation by the General Assembly. The Board members shall represent the Commonwealth at large and shall have knowledge and experience in child abuse and neglect, adult abuse and neglect, and domestic violence programs, finance and fiscal management and other related areas. The Commissioner shall serve as a permanent member of the Board of Trustees. The Board shall elect a chairman.

B. Initially, five appointments to the Board shall be for a term of four years, five appointments shall be for a term of three years, and five appointments shall be for a term of two years; thereafter, all appointments shall be for terms of four years. Appointments to fill vacancies other than by expiration of term shall be for the unexpired term. No member shall be eligible to serve more than two successive four-year terms.

C. The Board shall meet as frequently as necessary to fulfill its duties but not less than once a year.

1986, c. 416, §§ 63.1-327, 63.1-328; 2002, c. 747.

### § 63.2-2102. Powers and duties of the Board of Trustees

The Board of Trustees shall have the authority to:

1. Encourage, approve and accept gifts, contributions, bequests, or grants in cash or otherwise from any source, public or private, to carry out the purposes of the Family and Children's Trust Fund;

2. Administer and disburse any funds available to the Family and Children's Trust Fund;

3. Engage in fund-raising activities to expand and perpetuate the Family and Children's Trust Fund;

4. Monitor the use of funds to ensure the accountability of the recipients of funds;

5. Advise the Department, the Board of Social Services, and the Governor on matters concerning programs for the prevention of child abuse and neglect and family violence, the treatment of abused and neglected children and their families, and such other issues related to child abuse and neglect and family violence as identified by the Commissioner;

6. Communicate to the Departments of Behavioral Health and Developmental Services, Corrections, Criminal Justice Services, Education, Health, and Juvenile Justice, other state agencies as appropriate, and the Attorney General activities of the Board of Trustees related to efforts to prevent and treat child abuse and neglect and violence within families;

7. Encourage public awareness activities concerning child abuse and neglect and violence within families;

8. Adopt bylaws and other internal rules for the efficient management of the Family and Children's Trust Fund; and

9. Administer all matters necessary and convenient to carry out the powers and duties expressly given in this chapter.

1986, c. 416, § 63.1-329; 2002, c. 747; 2012, cc. 803, 835.

**§ 63.2-2103. Management of the Family and Children's Trust Fund**

All funds received shall be paid to the treasury of Virginia, which shall be custodian of the Family and Children's Trust Fund. Such funds shall be set aside as a separate fund and shall be managed by the Treasurer of Virginia at the discretion of the Board. The net earnings of the Trust Fund shall not inure to the benefit of any private person or entity, except that the Board of Trustees may authorize payment of reasonable compensation for goods provided and services rendered and may authorize disbursements in furtherance of the purpose set forth in § 63.2-2100. The Trust Fund shall not carry on propaganda, or otherwise attempt, to influence legislation as a substantial part of its activities; and it shall not participate or intervene, by publishing or distributing statements or by other means, in any political campaign on behalf of any candidate for public office. If the Trust Fund is dissolved, any assets remaining after payment, or provision for payment, of all claims against it shall be distributed to the Commonwealth for public purposes.

1986, c. 416, § 63.1-330; 2002, c. 747.

## Chapter 22 - VIRGINIA CAREGIVERS GRANT PROGRAM

**§ 63.2-2200. Definitions**

As used in this chapter, unless the context requires otherwise:

"Activities of daily living" or "ADLs" means bathing, dressing, toileting, transferring, bowel control, bladder control, and eating/feeding.

"Assistance" means aid that is required to be provided by another person in order to safely complete the activity.

"Care for a mentally or physically impaired person" means assistance with the activities of daily living provided to such person when the person has been screened and has been found to be eligible, in accordance with relevant state regulations, for placement and Medicaid reimbursement for services in an assisted-living facility or a nursing home or for receiving community-based long-term care services.

"Caregiver" means an adult who is a single person with a Virginia adjusted gross income of not more than $50,000, or married and the combined Virginia adjusted gross income of both spouses is not more than $75,000 who provides care for a mentally or physically impaired person within the Commonwealth. A caregiver shall be either related by blood, marriage, or adoption to, or the legally appointed guardian of, the mentally or physically impaired person for whom he is caring.

"Fund" means the Virginia Caregivers Grant Fund established by § 63.2-2202.

"Mentally or physically impaired person" means a person who is a resident of Virginia that requires assistance with two or more activities of daily living during more than half the year.

1999, cc. 737, 763, § 63.1-331; 2002, c. 747; 2007, c. 588.

**§ 63.2-2201. Caregivers Grant Program established**

A. From January 1, 2000, through December 31, 2010, any caregiver who provides care for a mentally or physically impaired person shall be eligible to receive an annual caregivers grant in the amount of $500. The grants under this chapter shall be paid from the Fund, as provided in this chapter, to the caregiver during the calendar year immediately following the calendar year in which the care for a mentally or physically impaired person was provided. The total amount of grants to be paid under this chapter for any year shall not exceed the amount appropriated by the General Assembly to the Fund for payment to caregivers for such year.

B. Only one grant shall be allowed annually for each mentally or physically impaired person receiving care under the provisions of this section. Multiple caregivers providing care to the same mentally or physically impaired person shall be eligible to share the $500 grant as mutually agreed. However, only one caregiver may submit a grant application for the person. A caregiver providing care to more than one eligible person shall submit a separate grant application for each person receiving care.

C. The mentally or physically impaired person being cared for may live in the caregiver's home or in his own home but shall not be receiving Medicaid-reimbursed community long-term care services, other than on a temporary or periodic basis, or living in a nursing home or other assisted liv-

ing facility where assistance with ADLs is already provided and the cost of such assistance is included in the monthly bill or rental fee.

1999, cc. 737, 763, § 63.1-332; 2002, c. 747; 2005, c. 31; 2007, c. 588.

**§ 63.2-2202. Virginia Caregivers Grant Fund established**

There is hereby established a special fund in the state treasury to be known as the Virginia Caregivers Grant Fund, which shall be administered by the Department. The Fund shall include such moneys as may be appropriated by the General Assembly from time to time and designated for the Fund. The Fund shall be used solely for the payment of grants to caregivers pursuant to this chapter. Unallocated moneys in the Fund in any year shall remain in the Fund and be available for allocation for grants under this chapter in ensuing fiscal years.

1999, cc. 737, 763, § 63.1-333; 2002, c. 747.

**§ 63.2-2203. Grant application process; administration**

A. Grant applications shall be submitted by caregivers to the Department between February 1 and May 1 of the year following the calendar year in which the care for a mentally or physically impaired person was provided. Failure to meet the application deadline shall render the caregiver ineligible to receive a grant for care provided during such calendar year. For filings by mail, the postmark cancellation shall govern the date of the filing determination.

B. Applications for grants shall include (i) proof of the caregiver's income and that of the caregiver's spouse, if applicable; (ii) certification by the private physician, licensed physician assistant pursuant to § 54.1-2951.2, or nurse practitioner pursuant to § 54.1-2957.02 who has screened the mentally or physically impaired person and found him to be eligible, in accordance with relevant state regulations, for placement in an assisted-living facility or a nursing home or for receiving community long-term care services; (iii) the mentally or physically impaired person's place of residence; and (iv) such other relevant information as the Department may reasonably require. Any caregiver applying for the grant pursuant to this chapter shall affirm, by signing and submitting his application for a grant, that the mentally or physically impaired person for whom he provided care and the care provided meet the criteria set forth in this chapter. As a condition of receipt of a grant, a caregiver shall agree to make available to the Department for inspection, upon request, all relevant and applicable documents to determine whether the caregiver meets the requirements for the receipt of grants as set forth in this chapter, and to consent to the use by the Department of all relevant information relating to eligibility for the requested grant.

C. The Department shall review applications for grants and determine eligibility and the amount of the grant to be allocated to each eligible caregiver. If the moneys in the Fund are less than the amount of grants to which applicants are eligible for caregiver services provided in the preceding calendar year, the moneys in the Fund shall be apportioned among eligible applicants pro rata, based upon the amount of the grant for which an applicant is eligible and the amount of money in the Fund.

D. The Department shall certify to the Comptroller the amount of grant to be allocated to eligible caregiver applicants. Payments shall be made by check issued by the State Treasurer on warrant of the Comptroller. The Comptroller shall not draw any warrants to issue checks for this program without a specific legislative appropriation as specified in conditions and restrictions on expenditures in the appropriation act.

E. Actions of the Department relating to the review, allocation and awarding of grants shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 4 of § 2.2-4002. Decisions of the Department shall be final and not subject to review or appeal.

1999, cc. 737, 763, § 63.1-334; 2002, cc. 41, 747; 2007, c. 588; 2008, c. 507.

**§ 63.2-2204. Confidentiality of information**

Except in accordance with proper judicial order or as otherwise provided by law, any employee or former employee of the Department shall not divulge any information acquired by him in the performance of his duties with respect to the income or grant eligibility of any caregiver submitted pursuant to this chapter. The provisions of this section shall not be applicable to (i) acts performed or words spoken or published in the line of duty under law; (ii) inquiries and investigations to obtain information as to the implementation of this chapter by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information shall be privileged; or (iii) the publication of statistics so classified as to prevent the identification of particular caregivers.

1999, cc. 737, 763, § 63.1-335; 2002, c. 747.