



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*

**Jason S. Miyares**  
Attorney General

804-786-2071  
FAX 804-786-1991  
Virginia Relay Services  
800-828-1120

**TO:** JAMES WILLIAMS, Commissioner  
Virginia Department of Social Services

**FROM:** ELLEN R. FULMER  
Assistant Attorney General

A handwritten signature in black ink, appearing to read "ERF", written over the name "ELLEN R. FULMER".

**DATE:** October 15, 2024

**SUBJECT:** Regulation Section - 22VAC40-705 (Exempt amendment to Child Protective Services)

I am in receipt of the attached regulation. You have asked the Office of the Attorney General to review and determine if the State Board of the Virginia Department of Social Services has the statutory authority to promulgate the proposed regulation and if the proposed regulation comports with applicable state and federal law.

This regulatory action is necessary to bring Child Protective Services requirements into compliance with Chapter 779 (SB 12) and Chapter 829 (HB 1128) of the 2024 Acts of Assembly which establish that if, during a human trafficking assessment, it is determined that a forensic interview of the child is needed but cannot be completed by the children's advocacy center ("CAC") in the jurisdiction within 14 days, the local department may facilitate the interview with a CAC located in another jurisdiction. Additionally, the term "child advocacy center" is replaced with the term "children's advocacy center."

Further, Chapter 662 (SB 30) and Chapter 629 (HB 27) of the 2024 Acts of Assembly establish the Parental Child Safety Placement Program that institutes timelines and requirements for allowing children to reside in the care of relatives/fictive kin caregivers to prevent entry into foster care.

It is my opinion that the State Board of DSS has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA"), and that in so doing the State Board does not exceed that authority.

Further, it is my view that this regulation is exempt from the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(4)(a). If you have any questions or need additional information about these regulations, please contact me at 786-4856.

cc: Kim F. Piner, Esquire  
Attachment

## Project 7974 - Final

## Department of Social Services

## Amend CPS Regulation-2024 Legislation

**22VAC40-705-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

"Abuser or neglector" means any person who is found to have committed the abuse or neglect of a child pursuant to Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2 of the Code of Virginia.

"Administrative appeal rights" means the child protective services appeals procedures for a local level informal conference and a state level hearing pursuant to § 63.2-1526 of the Code of Virginia, under which an individual who is found to have committed abuse or neglect may request that the local department's determination or records be amended.

"Alternative treatment options" means treatments used to prevent or treat illnesses or promote health and well-being outside the realm of modern conventional medicine.

"Appellant" means (i) anyone who has been found to be an abuser or neglector and appeals the founded disposition to the director of the local department of social services or to an administrative hearing officer and (ii) anyone who has been found to be an abuser or neglector and seeks judicial review of a decision by an administrative hearing officer.

"Assessment" means the process by which child protective services workers determine a child's and family's needs.

"Caretaker" means any individual having the responsibility of providing care and supervision of a child and includes the following: (i) a parent or other person legally responsible for the child's care; (ii) an individual who by law, social custom, expressed or implied acquiescence, collective consensus, agreement, or any other legally recognizable basis has an obligation to look after a child left in his care; and (iii) persons responsible by virtue of their positions of conferred authority.

"Case record" means a collection of information maintained by a local department, including written material, letters, documents, audio or video recordings, photographs, film, or other materials, regardless of physical form, about a specific child protective services investigation, family, or individual.

"Central Registry" means a subset of the child abuse and neglect information system and is the name index with identifying information of individuals named as an abuser or neglector in founded child abuse or neglect complaints or reports not currently under administrative appeal, maintained by the department.

"Child abuse and neglect information system" means the statewide computer system that collects and maintains information gathered by local departments regarding incidents of child abuse and neglect involving parents or other caretakers. The computer system is composed of three parts: the statistical information system with nonidentifying information, the Central Registry of founded complaints not on administrative appeal, and a database that can be accessed only by the department and local departments that contains all nonpurged child protective services reports. This system is the official state automated system required by federal law.

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

"Child protective services worker" means an individual who is qualified by virtue of education, training, and supervision and is employed by the local department to respond to child protective services complaints and reports of alleged child abuse or neglect.

"Children's advocacy center" means a child-friendly facility that (i) enables law enforcement, child protection, prosecution, mental health, medical, and victim advocacy professionals to work together to investigate child abuse, help children heal from abuse, and hold offenders accountable; (ii) has completed, or is in the process of completing, certain accreditation obligations and requires any forensic interview conducted at such facility to only be conducted by a trained child forensic interviewer in a multidisciplinary team collaborative effort; and (iii) is a member in good standing of the Children's Advocacy Centers of Virginia.

"Children's Advocacy Centers of Virginia" means the organizing entity for children's advocacy centers in Virginia.

"Chronically and irreversibly comatose" means a condition caused by injury, disease, or illness in which a patient has suffered a loss of consciousness with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner other than reflexive activity of muscles and nerves for low-level conditioned response and from which to a reasonable degree of medical probability there can be no recovery.

"Collateral" means a person whose personal or professional knowledge may help confirm or rebut the allegations of child abuse or neglect or whose involvement may help ensure the safety of the child.

"Complaint" means any information or allegation that a child is an abused or neglected child as defined in § 63.2-100 of the Code of Virginia made orally or in writing.

"Consultation" means the process by which the alleged abuser or neglector may request an informal meeting to discuss the investigative findings with the local department prior to the local department rendering a founded disposition of abuse or neglect against that person pursuant to § 63.2-1526 A of the Code of Virginia.

"Controlled substance" means a drug, substance, or marijuana as defined in § 18.2-247 of the Code of Virginia including those terms as they are used or defined in the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia. The term does not include alcoholic beverages or tobacco as those terms are defined or used in Title 3.2 or Title 4.1 of the Code of Virginia.

"Department" means the Virginia Department of Social Services.

"Differential response system" means the system by which local departments may respond to valid reports or complaints of child abuse or neglect by conducting either a family assessment or an investigation.

"Disposition" means the determination of whether or not child abuse or neglect occurred and that identifies the individual responsible for the abuse or neglect of the child.

"Documentation" means information and materials, written or otherwise, concerning allegations, facts, and evidence.

"Family Advocacy Program representative" means the individual employed by the United States Armed Forces who has responsibility for the program designed to address prevention, identification, evaluation, treatment, rehabilitation, follow-up, and reporting of family violence, pursuant to 22VAC40-705-50 and 22VAC40-705-140.

"Family assessment" means 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. These arrangements may be made in consultation with the caretaker of the child.

"First source" means any direct evidence establishing or helping to establish the existence or nonexistence of a fact. Indirect evidence and anonymous complaints do not constitute first source evidence.

"Founded" means that a review of the facts gathered as a result of an investigation shows by a preponderance of the evidence that child abuse or neglect has occurred. A determination that a case is founded shall be based primarily on first source evidence; in no instance shall a determination that a case is founded be based solely on indirect evidence or an anonymous complaint.

"Human trafficking assessment" means 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 the child's family that will deter abuse and neglect; and
3. Risk of future harm to the child.

"Identifying information" means name, social security number, address, race, sex, and date of birth.

"Indirect evidence" means any statement made outside the presence of the child protective services worker and relayed to the child protective services worker as proof of the contents of the statement.

"Informed opinion" means that the child has been informed and understands the benefits and risks, to the extent known, of the treatment recommended by conventional medical providers for the child's condition and the alternative treatment being considered as well as the basis of efficacy for each, or lack thereof.

"Investigation" means the collection of information 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 or not 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.

"Investigative narrative" means the written account of the investigation contained in the child protective services case record.

"Legitimate interest" means a lawful, demonstrated privilege to access the information as defined in § 63.2-105 of the Code of Virginia.

"Life-threatening condition" means a condition that if left untreated more likely than not will result in death and for which the recommended medical treatments carry a probable chance of impairing the health of the individual or a risk of terminating the life of the individual.

"Local department" means the city or county local agency of social services or department of public welfare in the Commonwealth of Virginia responsible for conducting investigations or family assessments of child abuse or neglect complaints or reports pursuant to § 63.2-1503 of the Code of Virginia.

"Local department of jurisdiction" means the local department in the city or county in Virginia where the alleged victim child resides or in which the alleged abuse or neglect is believed to have occurred. If neither of these is known, then the local department of jurisdiction shall be the local department in the county or city where the abuse or neglect was discovered.

"Mandated reporters" means those persons who are required to report suspicions of child abuse or neglect pursuant to § 63.2-1509 of the Code of Virginia.

"Monitoring" means ongoing contacts with the child, family, and collaterals that provide information about the child's safety and the family's compliance with the service plan.

"Multidisciplinary teams" means any organized group of individuals representing, but not limited to, medical, mental health, social work, education, legal, and law enforcement which will assist local departments in the protection and prevention of child abuse and neglect established pursuant to § 63.2-1503 K of the Code of Virginia. Citizen representatives may also be included.

"Near fatality" means an act that, as certified by a physician, places the child in serious or critical condition. Serious or critical condition is a life-threatening condition or injury.

"Notification" means informing designated and appropriate individuals of the local department's actions and the individual's rights.

"Particular medical treatment" means a process or procedure that is recommended by conventional medical providers and accepted by the conventional medical community.

"Plan of safe care" means a guide developed by service providers with their clients to ensure mothers and other caretakers of a substance-exposed infant have the necessary resources to safely care for the infant. The plan should address the needs of the child, mother, and other caretakers, as appropriate.

"Preponderance of evidence" means just enough evidence to make it more likely than not that the asserted facts are true. "Preponderance of evidence" is evidence that is of greater weight or more convincing than the evidence offered in opposition.

"Purge" means to delete or destroy any reference data and materials specific to subject identification contained in records maintained by the department and the local department pursuant to §§ 63.2-1513 and 63.2-1514 of the Code of Virginia.

"Reasonable diligence" means the exercise of persistent effort that is justifiable and appropriate under the circumstances.

"Report" means (i) a complaint as defined in this section or (ii) an official document on which information is given concerning abuse or neglect.

"Response time" means the time for the local department to initiate an investigation or family assessment after receiving a valid report of suspected child abuse or neglect based upon the facts and circumstances presented at the time the complaint or report is received.

"Safety plan" means an immediate course of action designed to protect a child from abuse or neglect.

"Service plan" means a plan of action to address the service needs of a child or the child's family in order to protect a child and the child's siblings to prevent future abuse and neglect and to preserve the family life of the parents and children whenever possible.

"Sex trafficking" means the recruitment, harboring, transportation, provision, obtaining, patronizing, or

soliciting of a person for the purpose of a commercial sex act as defined in § 18.2-357.1 of the Code of Virginia.

"State automated system" means the "child abuse and neglect information system" as previously defined.

"Sufficiently mature" is determined on a case-by-case basis and means that a child has no impairment of his cognitive ability and is of a maturity level capable of having intelligent views on the subject of his health condition and medical care.

"Terminal condition" means a condition caused by injury, disease, or illness from which to a reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent or (ii) the patient is chronically and irreversibly comatose.

"Unfounded" means that a review of the facts does not show by a preponderance of the evidence that child abuse or neglect occurred.

"Valid report or complaint" means a report or complaint of suspected child abuse or neglect for which the local department must conduct an investigation or family assessment because the following elements are present:

1. The alleged victim child is younger than 18 years of age at the time of the complaint or report;
2. The alleged abuser is the alleged victim child's parent or other caretaker or, for purposes of abuse or neglect described in subdivision 4 of the definition of "abused or neglected child" in § 63.2-100 of the Code of Virginia, an intimate partner of such parent or caretaker;
3. The local department receiving the complaint or report is a local department of jurisdiction; and
4. The circumstances described allege suspected child abuse or neglect.

"Withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening condition by providing treatment (including appropriate nutrition, hydration, and medication) that in the treating physician's reasonable medical judgment will most likely be effective in ameliorating or correcting all such conditions.

#### **22VAC40-705-60. Authorities of local departments.**

A. When responding to valid complaints or reports, local departments have the following authorities:

1. To talk to any child suspected of being abused or neglected, or child's siblings, without the consent of and outside the presence of the parent or other caretaker, as set forth by § 63.2-1518 of the Code of Virginia.
2. To take or arrange for photographs and x-rays of a child who is the subject of a complaint without the consent of and outside the presence of the parent or other caretaker, as set forth in § 63.2-1520 of the Code of Virginia.
3. To take a child into custody on an emergency removal under such circumstances as set forth in § 63.2-1517 of the Code of Virginia.
  - a. A child protective services worker planning to take a child into emergency custody shall first consult with a supervisor. However, this requirement shall not delay action on the child protective services worker's part if a supervisor cannot be contacted and the situation requires immediate action.
  - b. When circumstances warrant that a child be taken into emergency custody during a family assessment, the report shall be reassigned immediately as an investigation.
  - c. Any person who takes a child into custody pursuant to § 63.2-1517 of the Code of Virginia 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.
  - d. The local department shall have the authority to have a complete medical examination made of the child including a written medical report and, when appropriate, photographs and x-rays pursuant to § 63.2-1520 of the Code of Virginia.
  - e. When a child in emergency custody is in need of immediate medical or surgical treatment, the local director of social services or his designee may consent to such treatment when the parent does not provide consent and a court order is not immediately obtainable.
  - f. When a child is not in the local department's custody, the local department cannot consent to medical or surgical treatment of the child.
  - g. When a child is removed, every effort must be made to obtain an emergency removal order within four hours. Reasons for not doing so shall be stated in the petition for an emergency removal order.
  - h. Every effort shall be made to provide notice of the removal in person to the parent or guardian as soon as practicable.

i. Within 30 days of removing a child from the custody of the parents or legal guardians, the local department shall exercise due diligence to identify and notify in writing all maternal and paternal grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents) and all parents who have legal custody of any siblings of the child being removed and explain the options they have to participate in the care and placement of the child, subject to exceptions due to family or domestic violence. These notifications shall be documented in the state automated system. When notification to any of these relatives is not made, the local department shall document the reasons in the state automated system.

4. To enter into a Parental Child Safety Placement agreement with a parent, guardian, or legal custodian of a child if it is determined that the child cannot remain safely with their parent, guardian, or legal custodian, in accordance with §§ 63.2-1531 et seq. of the Code of Virginia and 22VAC40-705-200.

a. A child protective services worker who determines a child cannot remain safely in the care of their parent, guardian, or legal custodian must first consult with a supervisor. However, this requirement must not delay action on the child protective services worker's part if a supervisor cannot be contacted and situation requires immediate action.

b. Pursuant to § 63.2-1534 of the Code of Virginia, the local department must conduct a criminal history inquiry and child welfare history inquiry on all adults aged 18 and over residing in the home of the proposed caregiver under a parental child safety placement agreement. The assessment of the criminal history inquiry and child welfare history inquiry must be completed in accordance with the provisions of 22VAC40-705-200.

B. When responding to a complaint or report of abuse or neglect involving the human trafficking of a child, local departments may take a child into custody and maintain custody of the child for up to 72 hours without prior approval of a parent or guardian, provided that the alleged victim child has been identified as a victim of human trafficking as defined in § 63.2-100 of the Code of Virginia; the federal Trafficking Victims Protection Act of 2000 (22 USC § 7102 et seq.); and the federal Justice for Victims of Trafficking Act of 2015 (42 USC § 5101 et seq.) and pursuant to § 63.2-1517 of the Code of Virginia.

1. After taking the child into custody, the local department shall notify the parent or guardian of such child as soon as practicable. Every effort shall be made to provide such notice in person.

2. The local department shall also notify the Child-Protective Services Unit within the department whenever a child is taken into custody.

3. When a child is taken into custody by a child-protective services worker of a local department pursuant to this subsection, that child shall be returned as soon as practicable to the custody of his parent or guardian. However, the local department shall not be required to return the child to his parent or guardian if the circumstances are such that continuing in his place of residence or in the care or custody of such parent or guardian, or 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 the evidence of abuse is perishable or subject to deterioration before a hearing can be held.

4. If the local department cannot return the child to the custody of his parents or guardians within 72 hours, the local department shall obtain an emergency removal order pursuant to § 16.1-251 of the Code of Virginia.

C. When conducting a human trafficking assessment pursuant to § 63.2-1506.1 of the Code of Virginia, the local department may interview the alleged child victim or any sibling of that child without the consent and outside the presence of such child's or such child's sibling's parent, guardian, legal custodian, or other person standing in loco parentis, or school personnel.

#### **22VAC40-705-70. Collection of information.**

A. When conducting an investigation, the local department shall seek first-source information about the allegation of child abuse or neglect. When applicable, the local department shall include in the case record: police reports; depositions; photographs; physical, medical, and psychological reports; and any electronic recordings of interviews.

B. When completing a human trafficking assessment or family assessment, the local department shall gather all relevant information in collaboration with the family, to the degree possible, in order to determine the child and family services needs related to current safety or future risk of harm to the child.

If at any time during the human trafficking assessment it is determined that a forensic interview of the child is needed, such interview may be performed by a children's advocacy center within the jurisdiction; however, if an interview with a children's advocacy center within the jurisdiction cannot be completed within 14 days, the forensic interview may be conducted by a children's advocacy center located in another jurisdiction.

C. All information collected for a human trafficking assessment, family assessment, or an investigation

must be entered in the state automated system and maintained according to § 63.2-1514 for unfounded investigations, family assessments, or invalid reports, or according to 22VAC40-705-130 for founded investigations. The automated record entered in the state automated system is the official record. When documentation is not available in electronic form, it must be maintained in the hard copy portion of the record. Any hard copy information, including photographs and recordings, shall be noted as an addendum to the official record.

**22VAC40-705-80. Family assessment and investigation contacts.**

A. During the course of the family assessment, the child protective services worker shall document in writing in the state automated system the following contacts and observations. When any of these contacts or observations is not made, the child protective services worker shall document in writing why the specific contact or observation was not made.

1. The child protective services worker shall conduct a face-to-face interview with and observe the alleged victim child within the determined response time. When a victim child is younger than two years of age, this contact shall be within 24 hours of receiving the report.
2. The child protective services worker shall conduct a face-to-face interview with and observe all minor siblings residing in the home.
3. The child protective services worker shall conduct a face-to-face interview with and observe all other children residing in the home with parental permission.
4. The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians or any caretaker named in the report.
5. The child protective services worker shall observe the family environment, contact pertinent collaterals, and review pertinent records in consultation with the family.

B. During the course of the investigation, the child protective services worker shall document in writing in the state automated system the following contacts and observations. When any of these contacts or observations is not made, the child protective services worker shall document in writing why the specific contact or observation was not made.

1. The child protective services worker shall conduct a face-to-face interview with and observation of the alleged victim child within the determined response time. When a victim child is younger than two years of age, this contact shall be within 24 hours of receiving the report. If a local multidisciplinary team has determined that an interview of the child by a ~~child~~ children's advocacy center ~~recognized by the National Children's Alliance~~ is needed and an interview with a ~~recognized~~ child children's advocacy center within the jurisdiction cannot be completed within 14 days, the local department may facilitate the interview with a ~~recognized-child~~ children's advocacy center located in another jurisdiction. All interviews with alleged victim children must be electronically recorded except when the child protective services worker determines that:
  - a. The child's safety may be endangered by electronically recording his statement;
  - b. The age or developmental capacity of the child makes electronic recording impractical;
  - c. The child refuses to participate in the interview if electronic recording occurs;
  - d. In the context of a team investigation with law-enforcement personnel, the team or team leader determines that electronic recording is not appropriate; or
  - e. The victim provided new information as part of a family assessment and it would be detrimental to reinterview the victim and the child protective services worker provides a detailed narrative of the interview in the investigation record.

In the case of an interview conducted with a nonverbal child where none of the exceptions in this subdivision apply, it is appropriate to electronically record the questions being asked by the child protective services worker and to describe, either verbally or in writing, the child's responses. A child protective services worker shall document in detail in the record and discuss with supervisory personnel the basis for a decision not to electronically record an interview with the alleged victim child.

A child protective services finding may be based on the written narrative of the child protective services worker in cases where an electronic recording is unavailable due to equipment failure or the exceptions in this subdivision 1.

2. The child protective services worker shall conduct a face-to-face interview with and observe all minor siblings residing in the home.
3. The child protective services worker shall conduct a face-to-face interview with and observe all other children residing in the home with parental permission.
4. The child protective services worker shall conduct a face-to-face interview with the alleged abuser or neglecter.



a. The child protective services worker shall inform the alleged abuser or neglector of his right to electronically record any communication pursuant to § 63.2-1516 of the Code of Virginia.

b. If requested by the alleged abuser or neglector, the local department shall provide the necessary equipment in order to electronically record the interview and retain a copy of the electronic recording.

5. The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians.

6. The child protective services worker shall observe the environment where the alleged victim child lives. This requirement may be waived in complaints or reports of child abuse and neglect that took place in state licensed and religiously exempted child day centers, regulated and unregulated family day homes, private and public schools, group residential facilities, hospitals, or institutions where the alleged abuser or neglector is an employee or volunteer at such facility.

7. The child protective services worker shall observe the site where the alleged incident took place.

8. The child protective services worker shall conduct interviews with collaterals who have pertinent information relevant to the investigation and the safety of the child.

C. Pursuant to §§ 63.2-1505 and 63.2-1506 of the Code of Virginia, local departments may obtain and consider statewide criminal history record information from the Central Criminal Records Exchange and shall obtain and consider results of a search of the Central Registry on any individual who is the subject of a child abuse and neglect investigation or family assessment where there is evidence of child abuse or neglect and the local department is evaluating the safety of the home and whether removal is necessary to ensure the child's safety. The local department may also obtain a criminal record check and a Central Registry check on all adult household members residing in the home of the alleged abuser or neglector and where the child visits. Pursuant to § 19.2-389 of the Code of Virginia, local departments are authorized to receive criminal history information on the person who is the subject of the investigation as well as other adult members of the household for the purposes in § 63.2-1505 of the Code of Virginia. The results of the criminal record history search may be admitted into evidence if a child abuse or neglect petition is filed in connection with the child's removal. Local departments are prohibited from dissemination of this information except as authorized by the Code of Virginia.

D. Pursuant to §§ 63.2-1505 and 63.2-1506 of the Code of Virginia, local departments must determine whether the subject of an investigation or family assessment has resided in another state within the last five years, and if he has resided in another state, shall request a search of the child abuse and neglect registry or equivalent registry maintained by such state.

#### **22VAC40-705-200. Parental Child Safety Placement Program.**

A. The local department must prevent the unnecessary entry of children into foster care by promoting and supporting placements with relatives and fictive kin. Parental Child Safety Placements are protective interventions used when (i) a family assessment or investigation has been initiated in response to a valid complaint alleging that the child has been abused or neglected; (ii) the safety assessment conducted by the local department indicates that a child cannot remain safely in the home; and (iii) the child's parent, guardian, or legal custodian is in agreement with the parental child safety placement arrangement. The parent, guardian, or legal custodian must willingly agree to voluntarily place their child with a caregiver pursuant to a Parental Child Safety Placement Agreement.

B. This program is only available if the local department determines that the parent, guardian, or legal custodian can remedy the identified safety factor(s) within 90 calendar days.

C. The local department must determine that the proposed caregiver meets all of the following qualifications:

(i) 18 years of age or older;

(ii) a non-parent relative or fictive kin;

(iii) willing to receive and care for the child in the proposed caregiver's home;

(iv) willing to have a positive and continuous relationship with the child;

(v) willing and able to protect the child from abuse and neglect;

(vi) willing to use age-appropriate behavior management techniques; and

(vii) agrees not to use corporal punishment.

(viii) willing to support the relationship and contact between the child and parent, and the parent's efforts to remedy the safety issues.

D. Prior to the child's placement with the proposed caregiver identified by the parent(s), the local department must conduct an assessment of the proposed caregiver and their home where the child will be placed. The proposed caregiver assessment must include:

1. Completion of a criminal history inquiry with the person locator tool identified by the Department

in the Child and Family Services Manual and a child welfare history inquiry with the child welfare information system established in § 63.2-1514 of the Code of Virginia on all individuals aged 18 years and older residing in the home.

a. If the inquiry results in the identification of a barrier crime as defined in § 19.2-392.02 of the Code of Virginia or a negative child welfare history, including any validated child protective services referrals or founded child protective services dispositions, and the local department continues its consideration of the proposed caregiver, the local department must: (i) conduct a further assessment, which must include a discussion with the individual about the circumstances surrounding each conviction and negative child welfare history, and the current status of disposition, sentencing, probation, or other condition; and (ii) conduct a supervisory review of the information gathered from the further assessment described in (i) by the local department director, or if not available, the assistant director, program manager, or supervisor.

b. The results of the supervisory review and consultation must be documented in the child welfare information system.

2. An assessment and inquiry into substance use must be conducted. The local department must document the outcome of the assessment and screening deemed necessary or any refusal to consent to screening. This information must be used to evaluate the appropriateness of the proposed caregiver for the child's placement and recorded in the child welfare information system.

3. Completion and documentation of a visit to the home of the proposed caregiver to ensure the home environment is safe for the child, including the assessment of other children living in the home. The local department must complete the home assessment tools as identified in the Child and Family Services Manual. The results must be used in making the best interest determination and be documented in the child welfare information system.

4. A written determination that the placement is in the child's best interest and does not pose a threat to the child's safety or well-being, and must be completed and documented prior to the child's removal from the home of origin.

5. Written notification of the child's placement in the home to the Commissioner and the local board within 72 hours of placement in circumstances when the caregiver has a barrier crime or founded child protective services disposition.

6. Notification to the child's parent, guardian, or legal custodian if the local department determines that it is not in the best interests of the child to be placed with the proposed caregiver. The local department is prohibited by law from disclosing the results of any criminal or child protective services history unless the proposed caregiver provides consent for such disclosure.

E. The best interest determination assessment must be ongoing during the entire time the child is placed in the caregiver's home, as new information may be obtained at any time, and must be documented in the child welfare information system.

F. The local department must schedule a facilitated meeting with the family within seven calendar days of the child's placement in the caregiver's home to discuss all potential options for the child, family, and caregiver. If the facilitated meeting cannot be scheduled prior to the change in living arrangements the local department must discuss the benefits, requirements, advantages, and disadvantages of the available options including: (i) the child's entry into foster care and the potential for the caregiver to become an approved kinship foster parent; and (ii) financial assistance that may be available to the caregiver if the child remains with the caregiver under the Parental Child Safety Placement Program, including the process for accessing such financial assistance.

1. Prior to the facilitated meeting with the family, the local department should hold an internal staffing within one business day of the child's placement to prepare for the facilitated meeting.

G. If it is determined at the facilitated meeting that the family is willing to participate in the Parental Child Safety Placement Program, the parent, guardian, or legal custodian must enter into a Parental Child Safety Placement Agreement as designated by the Department in the Child and Family Services Manual with the local department within four calendar days of the facilitated meeting. The Parental Child Safety Placement Agreement must:

(i) be in writing and contain the terms outlined in § 63.2-1533 of the Code of Virginia;

(ii) include the signatures of the child's parent, guardian, or legal custodian, the caregiver, and the local department;

(iii) be provided to the child's parent, guardian, or legal custodian; and

(iv) be scanned into the child welfare information system.

H. The local department must open an In-Home Services case, as defined in § 63.2-1531 of the Code of Virginia, at the time the Parental Child Safety Placement agreement is signed and keep the case open for the duration of the agreement. The local department must:

1. Complete another visit to the home of the caregiver within two weeks of the child's placement with the caregiver and at least one time per month thereafter to ensure the home environment is safe for the child;
2. Complete routine assessments of the child's safety and progress made to safely return the child to the care of their parent, guardian, or legal custodian; and
3. Provide services and referrals for appropriate services to the child, parent, guardian, or legal custodian, and the caregiver to promote safety, permanence, and well-being.

I. The Parental Child Safety Placement Agreement is limited to no more than 90 calendar days from the child's placement in the caregiver's home.

J. The Parental Child Safety Placement Agreement may be extended an additional 90 calendar days not to exceed 180 days total if appropriate and mutually agreed upon by the caregiver, parent, and the local department and the reasons for such extension must be documented. However, prior to such extension, the local department must complete a safety assessment and hold a facilitated meeting with the family to discuss options for the child's care and determine whether to:

1. Return the child to the care of their parent, guardian, or legal custodian with the continued provision of services; or
2. Extend the Parental Child Safety Placement Agreement for no longer than an additional 90 calendar days; or
3. Initiate court action deemed necessary to ensure the child's safety, permanence, and well-being.

K. Prior to the termination or conclusion of the Parental Child Safety Placement Agreement, the local department must complete a safety assessment which must be documented in the child welfare information system.

1. If it is determined that the child can be safely returned home, the local department must hold a facilitated meeting to develop a safety plan with the child's parent, guardian, or legal custodian and the caregiver for the safe return of the child to the child's parent, guardian, or legal custodian or to another legal custodian. Such safety plan must be documented in the child welfare information system. If continued services are required for the child to safely return home, the local department must:

- a. Maintain the In-Home Services case for continued services with the agreement of the child's parent, guardian, or legal custodian; or
- b. Seek a child protective order or other appropriate court action to order continued services if the child's parent, guardian, or legal custodian does not agree to the In-Home Services case remaining open for continued services.

2. If the child cannot be safely returned home, the local department must seek removal of the child from the child's parent, guardian, or legal custodian, upon a petition alleging abuse or neglect pursuant to §§ 16.1-251 or 16.1-252 of the Code of Virginia. The local department must hold a facilitated meeting with the family in accordance with § 63.2-1535 of the Code of Virginia.

- a. If temporary custody of the child is granted by the court to the caregiver, the local department must maintain the In-Home Services case to provide continued services pursuant to the Alternative Living Arrangement Service Plan developed with the family at the facilitated meeting. If, at the time of the disposition hearing, the child cannot be safely returned to the home, the local department must take such action as appropriate in accordance with § 63.2-1535 of the Code of Virginia.
- b. If the court denies the removal of the child, the local department must seek a child protective order to provide continued services for the child and the child's parent, guardian, or legal custodian to ensure the child's safety and welfare. If the child protective order is granted, the case must remain open as an In-Home Services case.

L. A monthly maintenance payment may be available each fiscal year by application to the Department from allocations established through the Appropriations Act for the caregiver to take care of the child as long as there is a current a Parental Child Safety Placement Agreement or an Alternative Living Arrangement Agreement. Each caregiver applicant must provide income information of its household to the Department that may be subject to verification. Caregivers with household incomes over 400 percent of the Federal Poverty level may claim financial hardship by written declaration in the application and be placed in another countable income category. TANF money may be used to fund a portion of the monthly maintenance payment for those caregivers who qualify as a relative of the child, but the monthly payment remains the same whether the caregiver is a relative or fictive kin. The Department will monitor the funding on a monthly basis and will prioritize the available funding each fiscal year as follows:

1. Existing recipients of this financial assistance must continue to receive such payments unless otherwise ineligible or until funding is exhausted.

2. Payments will be available on a first come, first served basis without any consideration of income unless the Department determines that more than 50 percent of the available funding will be expended before the sixth month of the fiscal year.

3. If the Department determines that more than 50 percent of the available funding will be expended before the sixth month of the fiscal year, subsequent caregiver households will be prioritized based upon the following order (i) caregiver households that include an individual that receives a public assistance payment; (ii) caregiver households with countable income less than 130 percent Federal Poverty Level; (iii) caregiver households with countable income less than 250 percent Federal Poverty Level; (iv) caregiver households with countable income less than 400 percent Federal Poverty Level; and (v) caregiver households with countable income at 400 percent or over the Federal Poverty level.

M. Every applicant or recipient of this financial assistance has the right to request a hearing before a hearing officer. No hearing must be granted when the funds have been expended for the fiscal year. An opportunity for a hearing must be granted to any applicant or recipient who requests a hearing if financial assistance is denied, or is not acted upon with reasonable promptness, and to any applicant or recipient who is aggrieved by any agency action resulting in suspension, reduction, or termination of assistance for reasons other than lack of available funding.

1. The Department must provide a written Notice of Action to the caregiver of any denial or reduction action within 10 days of its decision. The notice of action will inform the caregiver of the following: (i) the right to a hearing; (ii) the method by which to obtain a hearing; and (iii) the right to be represented by an authorized representative, such as legal counsel, relative, friend, or other spokesman, or that they may represent themselves.

2. The applicant or recipient must request in writing a hearing within 10 days after receipt of the Department's Notice of Action. Within 10 days of receipt of the applicant's written request for a hearing, the Department must inform the caregiver of a date and time for the virtual hearing, which must take place within 10 days of the notice.

3. The Department's hearing officer must render a final agency decision within 10 days of the hearing, which is then subject to judicial review pursuant to the Administrative Process Act.