



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: **RICHARD MARTIN**
Policy and Planning Manager
Department of Social Services

FROM: **A. CAMERON O'BRION**
Assistant Attorney General

DATE: **August 9, 2004**

SUBJECT: **Proposed Changes to Child Abuse Definition; 22 VAC 40-705**

I have received the attached proposed regulation concerning an addition of a clause to Child Protective Service's child abuse definition. You asked the Office of the Attorney General to review and determine if the State Board of Social Services has the legal authority to promulgate the attached proposed addition and to identify any federal or state mandates regarding this regulation.

The proposed addition reflects a change to Child Protective Service's child abuse definition. This addition expands and clarifies the definition of physical abuse to include caretakers allowing children to be present during the attempted manufacture, manufacture or unlawful sale of Schedule I and II controlled substances. The change is being made to reflect changes to §§ 16.1-228 and 63.2-100 of the Code of Virginia.

Based on my review, it is my view that the State Board of Social Services, acting pursuant to Va. Code § 63.2-217, has the authority to adopt this regulatory change subject to Va. Code § 2.2-4006 and has not exceeded that authority. The Code of Virginia (1950) as amended, section 63.2-217, grants to the Board the authority to adopt regulations that are necessary to carry out the purpose of the title. While the original regulation covered situations that placed children in

harm, the addition to the definition, pursuant to the 2004 General Assembly's modification, clarifies that Child Protective Services has the authority and the duty to intervene in such situations.

If you have any questions, please contact me at (703) 277-3540.

Cc: Kim Piner, Esq.