

## **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. 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.

#### **22VAC40-705-200. 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.

- 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. A substance use screening if there is reason to believe that the proposed caregiver is using substances that may impact their ability to safely care for the child. The outcome of the screening, or the refusal to consent to the screening, must be used to assess the appropriateness of the proposed caregiver for the child's placement and be documented 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 safety risks posed by 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. This determination must be made and documented before placing the child in the home.

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 five business days of the child's placement in the caregiver's home to discuss all potential options for the child, family, and caregiver. The local department must discuss the benefits, requirements, advantages, and disadvantages of the following options at the facilitated meeting: (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 three business 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 once for no longer than 90 calendar days 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 caretaker applicant shall provide income information of its household to the Department that may be subject to verification. Caretakers 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 caretakers who qualify as a relative of the child, but the monthly payment remains the same whether the caretaker 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 6<sup>th</sup> month of the fiscal year.
- (3) If the Department determines that more than 50 percent of the available funding will be expended before the 6<sup>th</sup> 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 shall 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.

- a. The Department must provide a written Notice of Action to the caretaker of any denial or reduction action within 10 days of its decision. The notice of action will inform the caretaker 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.
- b. The applicant or recipient must request in writing a hearing within 10 days after receipt of the Department's Notice of Action.
- c. Within 10 days of receipt of the applicant's written request for a hearing, the Department shall inform the caretaker of a date and time for the virtual hearing, which shall take place within 10 days of the notice.
- d. The Department's hearing officer shall render a final agency decision within 10 days of the hearing, which is then subject to judicial review pursuant to the Administrative Process Act.