

VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

CHAPTER 500

An Act to amend and reenact §§ 2.1-380, 63.1-209, 63.1-248.2, 63.1-248.3, 63.1-248.4, 63.1-248.5:1, 63.1-248.6, 63.1-248.6:2, 63.1-248.7, 63.1-248.7:1, 63.1-248.10, and 63.1-248.13 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 12.1 of Title 63.1 sections numbered 63.1-248.2:1, 63.1-248.6:01, 63.1-248.6:02 and 63.1-248.19; and to repeal § 63.1-248.18 of the Code of Virginia, relating to child protective services.

[H 1360]

Approved April 5, 2000

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-380, 63.1-209, 63.1-248.2, 63.1-248.3, 63.1-248.4, 63.1-248.5:1, 63.1-248.6, 63.1-248.6:2, 63.1-248.7, 63.1-248.7:1, 63.1-248.10, and 63.1-248.13 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 12.1 of Title 63.1 sections numbered 63.1-248.2:1, 63.1-248.6:01, 63.1-248.6:02 and 63.1-248.19 as follows:

§ 2.1-380. Administration of systems including personal information.

Any agency maintaining an information system that includes personal information shall:

1. Collect, maintain, use, and disseminate only that personal information permitted or required by law to be so collected, maintained, used, or disseminated, or necessary to accomplish a proper purpose of the agency;

2. Collect information to the greatest extent feasible from the data subject directly;

3. Establish categories for maintaining personal information to operate in conjunction with confidentiality requirements and access controls;

4. Maintain information in the system with accuracy, completeness, timeliness, and pertinence as necessary to assure fairness in determinations relating to a data subject;

5. Make no dissemination to another system without (i) specifying requirements for security and usage including limitations on access thereto and (ii) receiving reasonable assurances that those requirements and limitations will be observed, provided this subdivision shall not apply to a dissemination made by an agency to an agency in another state, district or territory of the United States where the personal information is requested by the agency of such other state, district or territory in connection with the application of the data subject therein for a service, privilege or right under the laws thereof, nor shall this apply to information transmitted to family advocacy representatives of the United States Armed Forces in accordance with § 63.1-248.6 H O;

6. Maintain a list of all persons or organizations having regular access to personal information in the information system;

7. Maintain for a period of three years or until such time as the personal information is purged, whichever is shorter, a complete and accurate record, including identity and purpose, of every access to any personal information in a system, including the identity of any persons or organizations not having regular access authority but excluding access by the personnel of the agency wherein data is put to service for the purpose for which it is obtained;

8. Take affirmative action to establish rules of conduct and inform each person involved in the design, development, operation, or maintenance of the system, or the collection or use of any personal information contained therein, about all the requirements of this chapter, the rules and procedures, including penalties for noncompliance, of the agency designed to assure compliance with such requirements;

9. Establish appropriate safeguards to secure the system from any reasonably foreseeable threat to its security; *and*

10. Collect no personal information concerning the political or religious beliefs, affiliations, and activities of data subjects which is maintained, used or disseminated in or by any information system operated by any agency unless authorized explicitly by statute or ordinance.

§ 63.1-209. Confidential records.

A. The records of all child-welfare agencies and persons received or placed out by them and the facts learned by them concerning such persons and their parents or relatives, shall be confidential information, provided that the Commissioner, the State Board and their agents shall have access to such information, that it shall be disclosed upon the proper order of any court, and that it may be disclosed to any person having a legitimate interest in the placement of any such person.

The local department of social services 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 of social services 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 of social services 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 which is the subject of a report, including multi-disciplinary teams and family assessment and planning teams referenced in subsection F K of § 63.1-248.6, law-enforcement agencies and Commonwealth's attorneys; (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 § 63.1-195 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; and (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 department has to remove the child from his custodian.

Whenever a local department of social services 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.

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, and for any person who has held any such position, and for any other person to whom any such information is disclosed as hereinabove provided, to disclose, directly or indirectly, any such confidential information, except as herein provided. Every violation of this section shall constitute a Class 1 misdemeanor and be punishable as such.

B. Any person who has attained his majority, who has not been legally adopted in accordance with the provisions of Chapter 11 (§ 63.1-220 et seq.) of this title, who was not a child for whom all parental rights and responsibilities have been terminated, and who believes that he has been placed out by a child-placing agency, shall have the right to demand and receive from the Commissioner, the State Board, or any such agency, such information as any of them may have concerning his own parents or relatives.

C. Any person who has not been legally adopted in accordance with the provisions of Chapter 11 (§ 63.1-220 et seq.) 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 eighteen 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 of public welfare or social services which had custody of the child.

An eligible person 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 person resides or (ii) the circuit court of the county or city where the principal office of the child-placing agency or local board of public welfare or social services which 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 of public welfare or social services which 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 the biological parents.

D. This section shall not apply to the disposition of adoption records, reports and information which is governed by the provisions of § 63.1-236.

§ 63.1-248.2. Definitions.

As used in this chapter unless the context requires a different meaning:

"Abused or neglected child" means any child less than eighteen 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;

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;

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; or

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.

"Complaint" means any information or allegation of abuse or neglect made orally or in writing other than the reports referred to below.

"Department" means the State Department of Social Services.

"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.*

"Investigation" 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;*
- 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.*

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

"Prevention" means efforts that (i) promote health and competence in people and (ii) create, promote and strengthen environments that nurture people in their development.

"Report" means an official document on which information is given concerning abuse and neglect and which is required to be made by persons designated herein and by local departments in those situations in which ~~investigation of~~ a complaint from the general public reveals suspected abuse or neglect.

"The court" means the juvenile and domestic relations district court of the county or city.

"Valid report or complaint" means the local department of social services 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 is a local department of jurisdiction; and*
- 4. The circumstances described allege suspected child abuse or neglect.*

Nothing in this section shall relieve any person specified in § 63.1-248.3 from making reports required in that section, regardless of the identity of the person suspected to have caused such abuse or neglect.

§ 63.1-248.2:1. Child protective services differential response system.

The Department shall implement a child protective services differential response system in all local departments of social services. The differential response system allows local departments of social services 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 of social services by July 1, 2000, and complete implementation in all local departments of social services by July 1, 2003. The Department shall develop a training program for all staff persons involved in the differential response system, and all such staff shall receive this training.

§ 63.1-248.3. Physicians, nurses, teachers, etc., to report certain injuries to children; 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, 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 of Social Services' 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;
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 duly accredited Christian Science practitioner;
8. Any mental health professional;
9. Any law-enforcement officer;
10. Any mediator eligible to receive court referrals pursuant to § 8.01-576.8;
11. 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;
12. Any person associated with or employed by any private organization responsible for the care, custody or control of children; and
13. Any person who is designated a court-appointed special advocate pursuant to Article 1.4 (§ 9-173.6 et seq.) of Chapter 27 of Title 9.

If neither the locality in which the child resides or 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 of Social Services' 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 juvenile and domestic relations district court of the county or city where the abuse or neglect was discovered. Upon receipt of such a report by the court, the judge of the juvenile and domestic relations district court shall assign the report to a local department of social services that is not the employer of the suspected employee for investigation *or family assessment*; or, if the judge believes that no local department of social services within a reasonable geographic distance can be impartial in ~~investigating~~ *responding to* the reported case, the judge shall assign the report to the court service unit of his court for ~~investigation~~ *evaluation*. The judge may consult with the State Department of Social Services in selecting a local department to ~~conduct the investigation~~ *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.

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 State Board of Social Services. The person required to make the report shall disclose all information which 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 ~~investigating the reported case of child abuse or neglect of social services, which is the agency of jurisdiction,~~ any records or reports which document the basis for the report.

A1. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall include (i) a finding made by an attending physician within seven days of a child's birth that the results of a blood or urine test conducted within forty-eight hours of the birth of the child indicate the presence of a controlled substance not prescribed for the mother by a physician; (ii) a finding by an attending physician made within forty-eight hours of a child's birth 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 by an attending physician made within seven days of 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 by an attending physician made within seven days of a child's birth that the child has fetal alcohol syndrome 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.

B. Any person required to file a report pursuant to this section who fails to do so within seventy-two hours of his first suspicion of child abuse or neglect shall be fined not more than \$500 for the first failure and for any subsequent failures not less than \$100 nor more than \$1,000.

§ 63.1-248.4. 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 of Social Services' 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 juvenile and domestic relations district court of the county or city where the abuse or neglect was discovered. Upon receipt of such a report by the court, the judge of the juvenile and domestic relations district court shall assign the report to a local department of social services that is not the employer of the suspected employee for investigation *or family assessment*; or, if the judge believes that no local department of social services in a reasonable geographic distance can be impartial in ~~investigating~~ *responding to* the

reported case, the judge shall assign the report to the court service unit of his court for ~~investigation~~ *evaluation*. The judge may consult with the State Department of Social Services in selecting a local department to ~~conduct the investigation~~ *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.

§ 63.1-248.5:1. 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 ~~any investigation of a report or complaint which is all reports or complaints~~ made pursuant to this chapter and ~~which it determines to be unfounded, in accordance with rules and regulations approved by the Board.~~

B. ~~The Department shall maintain a Child Abuse and Neglect Information System that includes a central registry of founded complaints, pursuant to § 63.1-248.8. 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 unfounded these complaints or reports is to provide local departments with information regarding prior investigations 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 the unfounded case investigations, family assessments, 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 founded or unfounded complaints or reports regarding the same child or the person who is the subject of the complaint or report in that one year. The department shall retain the 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 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 which 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.~~

~~B. C. At the time the Department~~ *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 that the record will be retained for one year 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.

~~C. 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 court shall request and the department shall provide to the court its records of the investigation or family assessment for the court's in camera review. The petitioner shall be entitled to present evidence to support his petition. If the 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.~~

§ 63.1-248.6. 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 which shall be staffed with qualified personnel pursuant to regulations promulgated by the State Board of Social Services. The local department shall be the public agency responsible for receiving ~~and investigating and responding to~~ complaints and reports, except that (i) in cases where the reports or complaints are to be made to the juvenile and domestic relations district court and the judge determines that no local department of social services within a reasonable geographic distance can impartially ~~investigate~~ *respond to* the report, the court shall ~~be responsible for the investigation~~ *assign the report to the court services unit of his court 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 to assist in conducting the investigation in accordance with rules and regulations approved by the State Board.

B. The local department shall ensure, through its own personnel or through cooperative arrangements with other local agencies, that personnel who ~~investigate~~ *respond to* reports or complaints that 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, are qualified and assisted by the Department in accordance with State Board regulations.

C. 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 twenty-four-hours-a-day, seven-days-per-week basis.

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

E. The local department shall upon receipt of a report or complaint:

1. Make immediate investigation and, if the report or complaint was based upon one of the factors specified in subsection A1 of § 63.1-248.3, the department may file a petition pursuant to § 16.1-241.3;

2. When investigation of a complaint reveals cause to suspect abuse or neglect, complete a report and transmit it forthwith to the central registry, 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 A1 of § 63.1-248.3, if the mother sought substance abuse counseling or treatment prior to the child's birth;

3. When abuse or neglect is found, arrange for necessary protective and rehabilitative services to be provided to the child and his family;

4. If removal of the child or his siblings from their home is deemed necessary, petition the court for such removal;

5. report immediately to the attorney for the Commonwealth and the local law-enforcement agency and make available to them the records of the local department when abuse or neglect is suspected in any case involving (i) death of a child; (ii) 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, and provide the attorneys for the Commonwealth and the local law-enforcement agency with records of any complaints of abuse or neglect involving the victim or the alleged perpetrator. 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;

6. Send a follow-up report based on the investigation to the central registry within fourteen days and at subsequent intervals to be determined by Board regulations;

7. Determine within forty-five days if a report of abuse or neglect is founded or unfounded and transmit a report to such effect to the central registry and to the person who is the subject of the investigation. However, upon written justification by the local department, such determination may be extended, not to exceed a total of sixty days. If through the exercise of reasonable diligence the 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 forty-five-day or sixty-day period and documentation of such reasonable diligence shall be placed in the record;

8. 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;

9. F. 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;

10. G. *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;

11. H. 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; and.

12. I. 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/or 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/or 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.

J. 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 § 63.1-248.6:01 or, if designated as a child protective services differential response agency by the Department according to § 63.1-248.2:1, a family assessment pursuant to § 63.1-248.6:02.

F. K. The local department shall foster, when practicable, the creation, maintenance and coordination of hospital and community-based multi-disciplinary teams which 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 § 2.1-753. Multi-disciplinary 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 § 63.1-53 or § 63.1-209.

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.

L. The local department shall develop, where practical, memoranda of understanding for responding to reports of child abuse and neglect with local law enforcement and the local office of the Commonwealth's Attorney.

G. M. 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.

H. N. 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.

I. O. 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.

§ 63.1-248.6:01. Investigations by local departments.

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 A1 of § 63.1-248.3, the 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 A1 of § 63.1-248.3 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 forty-five 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, such determination may be extended, not to exceed a total of sixty days. If through the exercise of reasonable diligence the 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 forty-five-day or sixty-day period and documentation of such reasonable diligence shall be placed in the record; and

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.

§ 63.1-248.6:02. Family assessments by local departments.

A. When a local department has been designated as a child protective services differential response system participant by the Department pursuant to § 63.1-248.2:1 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 A1 of § 63.1-248.3, the 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 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;

5. Petition the court for services deemed necessary including, but not limited to, removal of the child or his siblings from their home;

6. Make no disposition of founded or unfounded for reports in which a family assessment is completed; 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.

B. When a local department of social services 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 of social services, or (v) cases involving a caretaker at a state-licensed child day center, religiously exempt child day center, regulated family day home, private or public school, or hospital or any institution.

§ 63.1-248.6:2. 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 which 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.

§ 63.1-248.7. Establishment of Child-Protective Services Unit; duties.

There is created a Child-Protective Services Unit in the Department of Social Services which shall have the following powers and duties:

~~A.~~ 1. To evaluate and strengthen all local, regional and state programs dealing with child abuse and neglect.

~~B.~~ 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.

~~C.~~ 3. To assist in developing programs aimed at discovering and preventing the many factors causing child abuse and neglect.

~~D.~~ 4. To prepare and disseminate, including the presentation of, educational programs and materials on child abuse and neglect.

~~E.~~ 5. To provide educational programs for professionals required by law to make reports under this chapter.

~~F.~~ 6. To establish standards of training and provide educational programs to qualify workers in the field of child-protective services.

~~G.~~ 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.

~~H.~~ 8. To maintain staff qualified pursuant to State 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.

~~I.~~ 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.

~~J.~~ 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.

~~K.~~ 11. To maintain a ~~central registry of~~ *Child Abuse and Neglect Information System that includes* all cases of child abuse and neglect within the Commonwealth.

~~L.~~ 12. To provide for methods to preserve the confidentiality of all records in order to protect the rights of the child, his parents or guardians.

§ 63.1-248.7:1. State Board of Social Services oversight duties.

The State Board shall be responsible for establishing standards for out-of-family investigations *and family assessments*. The State Board shall establish an advisory committee including, but not limited to, representatives of the following types of organizations or groups: public school employees, a hospital for children, a licensed child care center, a juvenile detention home, a public or private residential facility for children, a family day care home, a local department of social services, a religious organization with a program for children, and Virginians for Child Abuse Prevention. The Chairman of the State Board shall appoint such persons for terms established by the Board. The committee shall advise the State Board on the effectiveness of the policies and standards governing out-of-family investigations *and family assessments*.

§ 63.1-248.10. 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.

§ 63.1-248.13. Photographs and X-rays of child; use as evidence.

In any case of suspected child abuse, photographs and X-rays of said 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 said 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 juvenile and domestic relations district court; provided, however, that 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.

§ 63.1-248.19. *Evaluation of the child protective services differential response system.*

The Department shall evaluate and report on the impact and effectiveness of the implementation of the child protective services differential response system in meeting the purposes set forth in this chapter. The evaluation shall include, but is not limited to, the following information: changes in the number of investigations, the number of families receiving services, the number of families rejecting services, the impact on out-of-home placements, the availability of needed services, community cooperation, successes and problems encountered, the overall operation of the child protective services differential response system and recommendations for improvement. The Department shall submit annual reports to the House Committee on Health, Welfare and Institutions and the Senate Committee on Rehabilitation and Social Services.

2. That § 63.1-248.18 of the Code of Virginia is repealed.

3. That the State Board of Social Services shall promulgate regulations to implement the provisions of this act within 280 days of enactment.