

013500648

HOUSE BILL NO. 2492

Offered January 10, 2001

Prefiled January 10, 2001

A BILL 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, 63.1-248.6:01, 63.1-248.6:1 and 63.1-248.17 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 63.1-248.7:01, relating to child-protective services.

Patrons—Brink; Senator: Barry

Referred to Committee on Health, Welfare and Institutions

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, 63.1-248.6:01, 63.1-248.6:1 and 63.1-248.17 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 63.1-248.7:01 as follows:

§ 2.1-380. Administration of systems including personal information; Internet privacy policy.

A. 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 subsection Θ Mof § 63.1-248.6 or subsection M of § 63.1-248.7:01;

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.

B. By December 1, 2000, every public body, as defined in § 2.1-341, that has an Internet website associated with that public body shall develop an Internet privacy policy and an Internet privacy policy statement that explains the policy to the public. The policy shall be consistent with the requirements of this chapter. By January 1, 2001, the statement shall be made available on the public body's website in a conspicuous manner. The Secretary of Technology or his designee shall provide guidelines for developing the policy and the statement, and each public body shall tailor the policy and the statement to reflect the information practices of the individual public body. At minimum, the policy and the statement shall address (i) what information, including personally identifiable information, will be

INTRODUCED

HB2492

59 collected, if any; (ii) whether any information will be automatically collected simply by accessing the
60 website and, if so, what information; (iii) whether the website automatically places a computer file,
61 commonly referred to as a "cookie," on the Internet user's computer and, if so, for what purpose; and
62 (iv) how the collected information is being used or will be used.

63 § 63.1-209. Confidential records.

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

69 The local department of social services *or regional child-protective services unit pursuant to*
70 *§ 63.1-248.7:01* may disclose the contents of records and information learned during the course of a
71 child protective services investigation or during the provision of child protective services to a family,
72 without a court order and without the consent of the family, to a person having a legitimate interest
73 when in the judgment of the local department of social services *or regional unit* such disclosure is in
74 the best interest of the child who is the subject of the records. Persons having a legitimate interest in
75 child protective services records of local departments of social services *and regional units* include, but
76 are not limited to, (i) any person who is responsible for investigating a report of known or suspected
77 abuse or neglect or for providing services to a child or family which is the subject of a report, including
78 multi-disciplinary teams and family assessment and planning teams referenced in subsection ~~K~~ I of
79 § 63.1-248.6 *and subsection I of § 63.1-248.7:01*, law-enforcement agencies and Commonwealth's
80 attorneys; (ii) child welfare or human services agencies of the Commonwealth or its political
81 subdivisions when those agencies request information to determine the compliance of any person with a
82 child protective services plan or an order of any court; (iii) personnel of the school or child day program
83 as defined in § 63.1-195 attended by the child so that the local department can receive information from
84 such personnel on an ongoing basis concerning the child's health and behavior, and the activities of the
85 child's custodian; and (iv) a parent, grandparent, or any other person when such parent, grandparent or
86 other person would be considered by the local department as a potential caretaker of the child in the
87 event the *local* department has to remove the child from his custodian.

88 Whenever a local department of social services *or regional unit* exercises its discretion to release
89 otherwise confidential information to any person who meets one or more of these descriptions, the local
90 department *or regional unit* shall be presumed to have exercised its discretion in a reasonable and lawful
91 manner.

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

97 B. Any person who has attained his majority, who has not been legally adopted in accordance with
98 the provisions of Chapter 10.2 (§ 63.1-219.7 et seq.) of this title, who was not a child for whom all
99 parental rights and responsibilities have been terminated, and who believes that he has been placed out
100 by a child-placing agency, shall have the right to demand and receive from the Commissioner, the State
101 Board, or any such agency, such information as any of them may have concerning his own parents or
102 relatives.

103 C. Any person who has not been legally adopted in accordance with the provisions of Chapter 10.2
104 (§ 63.1-219.7 et seq.) of this title and who was a child for whom all parental rights and responsibilities
105 have been terminated, shall not have access to any information from a child-placing agency with respect
106 to the identity of the biological family, except (i) upon application of the child who is eighteen or more
107 years of age, (ii) upon order of a circuit court entered upon good cause shown, and (iii) after notice to
108 and opportunity for hearing by the applicant for such order and the child-placing agency or local board
109 of public welfare or social services which had custody of the child.

110 An eligible person who is a resident of Virginia may apply for the court order provided for herein to
111 (i) the circuit court of the county or city where the person resides or (ii) the circuit court of the county
112 or city where the principal office of the child-placing agency or local board of public welfare or social
113 services which controls the information sought by the person is located. An eligible person who is not a
114 resident of Virginia shall apply for such a court order to the circuit court of the county or city where the
115 principal office of the child-placing agency or local board of public welfare or social services which
116 controls the information sought by the person is located.

117 If the identity and whereabouts of the biological family are known to the agency or local board, the
118 court may require the agency or local board to advise the biological parents of the pendency of the
119 application for such order. In determining good cause for the disclosure of such information, the court
120 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 § 63.1-219.53.

§ 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.

"Regional unit" means a regional child-protective services unit established within each regional office of the Department of Social Services.

"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 or regional units in those situations in which 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 or regional unit has evaluated the information and allegations of the report or complaint and determined that the local department or regional unit 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 or regional unit receiving the complaint or report is a local department or regional unit 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

182 required in that section, regardless of the identity of the person suspected to have caused such abuse or
183 neglect.

184 § 63.1-248.3. Physicians, nurses, teachers, etc., to report certain injuries to children; penalty for
185 failure to report.

186 A. The following persons who, in their professional or official capacity, have reason to suspect that a
187 child is an abused or neglected child, shall report the matter immediately, except as hereinafter provided,
188 to the local department of the county or city wherein the child resides or wherein the abuse or neglect is
189 believed to have occurred or to the Department of Social Services' toll-free child abuse and neglect
190 hotline:

191 1. Any person licensed to practice medicine or any of the healing arts;

192 2. Any hospital resident or intern, and any person employed in the nursing profession;

193 3. Any person employed as a social worker;

194 4. Any probation officer;

195 5. Any teacher or other person employed in a public or private school, kindergarten or nursery
196 school;

197 6. Any person providing full-time or part-time child care for pay on a regularly planned basis;

198 7. Any duly accredited Christian Science practitioner;

199 8. Any mental health professional;

200 9. Any law-enforcement officer;

201 10. Any mediator eligible to receive court referrals pursuant to § 8.01-576.8;

202 11. Any professional staff person, not previously enumerated, employed by a private or state-operated
203 hospital, institution or facility to which children have been committed or where children have been
204 placed for care and treatment;

205 12. Any person associated with or employed by any private organization responsible for the care,
206 custody or control of children; and

207 13. Any person who is designated a court-appointed special advocate pursuant to Article 1.4
208 (§ 9-173.6 et seq.) of Chapter 27 of Title 9.

209 If neither the locality in which the child resides or where the abuse or neglect is believed to have
210 occurred is known, then such report shall be made to the local department of the county or city where
211 the abuse or neglect was discovered or to the Department of Social Services' toll-free child abuse and
212 neglect hotline.

213 *All complaints and reports involving out-of-family investigations shall be made or referred to the*
214 *regional unit pursuant to § 63.1-248.7:01.*

215 If an employee of the local department is suspected of abusing or neglecting a child, the report shall
216 be made to the juvenile and domestic relations district court of the county or city where the abuse or
217 neglect was discovered. Upon receipt of such a report by the court, the judge of the juvenile and
218 domestic relations district court shall assign the report to a local department of social services that is not
219 the employer of the suspected employee for investigation or family assessment; or, if the judge believes
220 that no local department of social services within a reasonable geographic distance can be impartial in
221 responding to the reported case, the judge shall assign the report to the court service unit of his court
222 for evaluation. The judge may consult with the State Department of Social Services in selecting a local
223 department to respond to the report or the complaint.

224 If the information is received by a teacher, staff member, resident, intern or nurse in the course of
225 professional services in a hospital, school or similar institution, such person may, in place of said report,
226 immediately notify the person in charge of the institution or department, or his designee, who shall
227 make such report forthwith.

228 The initial report may be an oral report but such report shall be reduced to writing by the child
229 abuse coordinator of the local department on a form prescribed by the State Board of Social Services.
230 The person required to make the report shall disclose all information which is the basis for his suspicion
231 of abuse or neglect of the child and, upon request, shall make available to the child-protective services
232 coordinator and the local department of social services, which is the agency of jurisdiction, *or the*
233 *regional child-protective services investigator and the regional unit* any records or reports which
234 document the basis for the report.

235 A1. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall
236 include (i) a finding made by an attending physician within seven days of a child's birth that the results
237 of a blood or urine test conducted within forty-eight hours of the birth of the child indicate the presence
238 of a controlled substance not prescribed for the mother by a physician; (ii) a finding by an attending
239 physician made within forty-eight hours of a child's birth that the child was born dependent on a
240 controlled substance which was not prescribed by a physician for the mother and has demonstrated
241 withdrawal symptoms; (iii) a diagnosis by an attending physician made within seven days of a child's
242 birth that the child has an illness, disease or condition which, to a reasonable degree of medical
243 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 responding to the reported case, the judge shall assign the report to the court service unit of his court for evaluation. The judge may consult with the State Department of Social Services in selecting a local department to respond to the report or complaint. *All complaints and reports involving out-of-family investigations shall be made or referred to the regional unit pursuant to § 63.1-248.7:01.* 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 *or regional unit* shall retain the records of all reports or complaints made pursuant to this chapter, 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 these complaints or reports is to provide local departments *and regional units* with information regarding prior complaints or reports. In no event shall the mere existence of a prior complaint or report be used to determine that a subsequent complaint or report is founded. The subject of the complaint or report is the person who is alleged to have committed abuse or neglect. The subject of the complaint or report shall have access to his own record. The record of unfounded investigations, 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 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~~ *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.

C. At the time the local department *or regional unit* 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.

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 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 respond to the report, the court shall 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 and the relevant private or state-operated hospital, institution or other facility, or school board to assist in conducting a joint investigation in accordance with rules and regulations approved by the State Board, in consultation with the Departments of Education, Health, Medical Assistance Services, Mental Health, Mental Retardation and Substance Abuse Services, Juvenile Justice and Corrections. *All complaints and reports involving out-of-family investigations shall be made or referred to the regional child-protective services office pursuant to § 63.1-248.7:01.*

B. The local department shall ensure, through its own personnel or through cooperative arrangements with other local agencies, that personnel who 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 and the relevant private or state-operated hospital, institution or other facility, or school board 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.

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

ED. The local department shall upon receipt of a complaint 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.

FE. 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.

GF. 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.

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.

IG. 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.

JH. 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.

KI. 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.

LJ. 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.

MK. 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.

NL. 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.

OM. 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 and regional units.

If the local department *or regional unit pursuant to 63.1-248.7:01* responds to the report or complaint by conducting an investigation, the local department *or regional unit* 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 *local* department may file a petition pursuant to § 16.1-241.3;

2. Complete a report and transmit it forthwith to the Department, except that no such report shall be transmitted in cases in which the cause to suspect abuse or neglect is one of the factors specified in subsection 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

428 investigation. However, upon written justification by the local department, such determination may be
429 extended, not to exceed a total of sixty days. If through the exercise of reasonable diligence the *local*
430 department *or regional unit* is unable to find the child who is the subject of the report, the time the
431 child cannot be found shall not be computed as part of the forty-five-day or sixty-day period and
432 documentation of such reasonable diligence shall be placed in the record; and

433 6. If a report of abuse or neglect is unfounded, transmit a report to such effect (i) to the complainant
434 and (ii) to the parent or guardian and (iii) to the person responsible for the care of the child in those
435 cases where such person was suspected of abuse or neglect.

436 § 63.1-248.6:1. Appeals of certain actions of local departments or regional units.

437 A. A person who is suspected of or is found to have committed abuse or neglect may, within thirty
438 days of being notified of that determination, request the local department *or regional unit pursuant to*
439 § 63.1-248.7:01 rendering such determination to amend the determination and the local department's *or*
440 *regional unit's* related records. Upon written request, the local department *or regional unit* shall provide
441 the appellant all information used in making its determination. Disclosure of the reporter's name or
442 information which may endanger the well-being of a child shall not be released. The identity of a
443 collateral witness or any other person shall not be released if disclosure may endanger his life or safety.
444 Information prohibited from being disclosed by state or federal law or regulation shall not be released.
445 The local department *or regional unit* shall hold an informal conference or consultation where such
446 person, who may be represented by counsel, shall be entitled to informally present testimony of
447 witnesses, documents, factual data, arguments or other submissions of proof to the local department *or*
448 *regional unit*. With the exception of the director of the local department *or regional office*, no person
449 whose regular duties include substantial involvement with child abuse and neglect cases shall preside
450 over the informal conference. If the local department *or regional office* refuses the request for
451 amendment or fails to act within forty-five days after receiving such request, the person may, within
452 thirty days thereafter, petition the Commissioner, who shall grant a hearing to determine whether it
453 appears, by a preponderance of the evidence, that the determination or record contains information
454 which is irrelevant or inaccurate regarding the commission of abuse or neglect by the person who is the
455 subject of the determination or record and therefore shall be amended. A person who is the subject of a
456 report who requests an amendment to the record, as provided above, has the right to obtain an extension
457 for an additional specified period of up to sixty days by requesting in writing that the forty-five days in
458 which the local department must act be extended. The extension period, which may be up to sixty days,
459 shall begin at the end of the forty-five days in which the local department must act. When there is an
460 extension period, the thirty-day period to request an administrative hearing shall begin on the
461 termination of the extension period.

462 B. The Commissioner shall designate and authorize one or more members of his staff to conduct
463 such hearings. The decision of any staff member so designated and authorized shall have the same force
464 and effect as if the Commissioner had made the decision. The hearing officer shall have the authority to
465 issue subpoenas for the production of documents and the appearance of witnesses. The hearing officer is
466 authorized to determine the number of depositions that will be allowed and to administer oaths or
467 affirmations to all parties and witnesses who plan to testify at the hearing. The State Board of Social
468 Services shall promulgate regulations necessary for the conduct of such hearings. Such regulations shall
469 include provisions stating that the person who is the subject of the report has the right: (i) to submit oral
470 or written testimony or documents in support of himself and (ii) to be informed of the procedure by
471 which information will be made available or withheld from him. In case of any information withheld,
472 such person shall be advised of the general nature of such information and the reasons, for reasons of
473 privacy or otherwise, that it is being withheld. Upon giving reasonable notice, either party at his own
474 expense may depose a nonparty and submit such deposition at the hearing pursuant to State Board
475 regulation. Upon good cause shown, after a party's written motion, the hearing officer may issue
476 subpoenas for the production of documents or to compel the attendance of witnesses at the hearing,
477 except that alleged child victims of the person and their siblings shall not be subpoenaed, deposed or
478 required to testify. The person who is the subject of the report may be represented by counsel at the
479 hearing. Upon petition, the juvenile and domestic relations court or family court, as the case may be,
480 shall have the power to enforce any subpoena that is not complied with or to review any refusal to issue
481 a subpoena. Such decisions may not be further appealed except as part of a final decision that is subject
482 to judicial review. Such hearing officers are empowered to order the amendment of such determination
483 or records as is required to make them accurate and consistent with the requirements of this chapter or
484 the regulations promulgated hereunder. If, after hearing the facts of the case, the hearing officer
485 determines that the person who is the subject of the report has presented information that was not
486 available to the local department *or regional unit* at the time of the local conference and which if
487 available may have resulted in a different determination by the local department *or regional unit*, he
488 may remand the case to the local department *or regional unit* for reconsideration. The local department
489 *or regional unit* shall have fourteen days in which to reconsider the case. If, at the expiration of

fourteen days, the local department *or regional unit* fails to act or fails to amend the record to the satisfaction of the appellant, the case shall be returned to the hearing officer for a determination. If aggrieved by the decision of the hearing officer, such person may obtain further review of the decision in accordance with Article 4 (§ 9-6.14:15 et seq.) of the Administrative Process Act.

C. Whenever an appeal of the local department's *or regional unit's* finding is made and a criminal charge is also filed against the appellant for the same conduct involving the same victim as investigated by the local department *or regional unit*, the appeal process shall automatically be stayed until the criminal prosecution in circuit court is completed. During such stay, the appellant's right of access to the records of the local department *or regional unit* regarding the matter being appealed shall also be stayed. Once the criminal prosecution in circuit court has been completed, the local department *or regional unit* shall advise the appellant in writing of his right to resume his appeal within the time frames provided by law and regulation.

63.1-248.7:01 Regional Child-Protective Services Unit.

A. Each regional office of the Department of Social Services shall establish a regional child-protective services unit that shall be staffed with qualified personnel pursuant to regulations promulgated by the State Board of Social Services. The regional unit shall be the public agency responsible for receiving and responding to complaints and reports involving out-of-family investigations, except that 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 regional unit shall request the relevant private or state-operated hospital, institution or other facility, or school board to assist in conducting a joint investigation in accordance with rules and regulations approved by the State Board, in consultation with the Departments of Education, Health, Medical Assistance Services, Mental Health, Mental Retardation and Substance Abuse Services, Juvenile Justice and Corrections.

B. The regional unit shall ensure that personnel who 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 relevant private or state-operated hospital, institution or other facility, or school board in accordance with State Board regulations.

C. The regional unit shall ensure, through its own person or through contract investigators, the capability of receiving complaints or reports and responding to them promptly on a twenty-four-hours-a-day, seven-days-per-week basis.

D. The regional unit shall widely publicize a telephone number for receiving complaints and reports and receive referral complaints and reports from local departments of social services involving out-of-family investigations.

E. The regional unit shall upon receipt of a complaint report immediately to the attorney for the Commonwealth and the local law-enforcement agency and make available to them the records of the regional unit 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 regional unit shall not allow reports of the death of the victim from local agencies to substitute for direct reports to the attorney for the Commonwealth and the local law-enforcement agency.

F. When abuse or neglect is suspected in any case involving the death of a child, the regional unit shall report the case immediately to the regional medical examiner and the local law-enforcement agency.

G. The regional unit 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 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 if the whereabouts of the child or such persons are unknown to the regional unit.

H. Upon receipt of a report of child abuse or neglect, the regional unit shall determine the validity of such report and shall conduct an investigation pursuant to § 63.1-248.6:01.

I. The regional unit shall foster, when practicable, the creation, maintenance and coordination of hospital and community-based multi-disciplinary teams that shall include where possible, but not be limited to, members of the medical, mental health, social work, nursing, education, legal and law-enforcement professions. Such teams shall assist the regional units in identifying abused and

551 neglected children; coordinating medical, social, and legal services for the children and their families;
552 developing innovative programs for detection and prevention of child abuse; promoting community
553 concern and action in the area of child abuse and neglect; and disseminating information to the general
554 public with respect to the problem of child abuse and neglect and the facilities and prevention and
555 treatment methods available to combat child abuse and neglect. These teams may be the family
556 assessment and planning teams established pursuant to § 2.1-753. Multi-disciplinary teams may develop
557 agreements regarding the exchange of information among the parties for the purposes of the
558 investigation and disposition of complaints of child abuse and neglect, delivery of services, and child
559 protection. Any information exchanged in accordance with the agreement shall not be considered to be
560 a violation of the provisions of § 63.1-53 or § 63.1-209.

561 The regional unit shall also coordinate its efforts in the provision of these services for abused and
562 neglected children with the judge and staff of the court.

563 J. The regional unit shall develop, where practical, memoranda of understanding for responding to
564 reports of child abuse and neglect with local law enforcement and the local office of the attorney for the
565 Commonwealth.

566 K. The regional unit shall report annually on its activities concerning abused and neglected children
567 to the court and to the Child-Protective Services Unit in the Department on forms provided by the
568 Department.

569 L. Statements, or any evidence derived therefrom, made to regional unit child-protective services
570 personnel, or to any person performing the duties of such personnel, by any person accused of the
571 abuse, injury, neglect or death of a child after the arrest of such person, shall not be used in evidence
572 in the case in chief against such person in the criminal proceeding on the question of guilt or innocence
573 over the objection of the accused, unless the statement was made after such person was fully advised (i)
574 that he has a right to remain silent, (ii) that anything he says may be used against him in a court of
575 law, (iii) that he has a right to the presence of an attorney during any interviews, and (iv) that if he
576 cannot afford an attorney, one will be appointed for him prior to any questioning.

577 M. Notwithstanding any other provision of law, the regional unit, in accordance with Board
578 regulations, shall transmit information regarding founded complaints and may transmit other
579 information regarding reports, complaints, and investigations involving active duty military personnel or
580 members of their household to family advocacy representatives of the United States Armed Forces.

581 § 63.1-248.17. Cooperation by state entities.

582 All law-enforcement departments and other state and local departments, agencies, authorities and
583 institutions shall cooperate with each child-protective services coordinator of a local department, regional
584 child-protective services investigator and any multi-discipline teams in the detection and prevention of
585 child abuse.