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SENATE BILL NO. 1011

Offered January 8, 2003

Prefiled January 7, 2003

A BILL to amend and reenact §§ 8.01-400, 19.2-271.3 and 63.2-1509 of the Code of Virginia, relating to mandatory reporting of child abuse and neglect by ministers of religion; penalty.

Patrons—Howell, O'Brien, Byrne, Deeds, Houck, Puller and Whipple; Delegates: Barlow, Baskerville, Bland, Brink, Crittenden, Johnson, Melvin, Miles, Petersen and Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-400, 19.2-271.3 and 63.2-1509 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-400. Communications between ministers of religion and persons they counsel or advise.

~~No~~ *Except as provided in § 63.2-1509, no* regular minister, priest, rabbi, or accredited practitioner over the age of eighteen years, of any religious organization or denomination usually referred to as a church, shall be required to give testimony as a witness or to relinquish notes, records or any written documentation made by such person, or disclose the contents of any such notes, records or written documentation, in discovery proceedings in any civil action which would disclose any information communicated to him in a confidential manner, properly entrusted to him in his professional capacity and necessary to enable him to discharge the functions of his office according to the usual course of his practice or discipline, wherein such person so communicating such information about himself or another is seeking spiritual counsel and advice relative to and growing out of the information so imparted.

§ 19.2-271.3. Communications between ministers of religion and persons they counsel or advise.

~~No~~ *Except as provided in § 63.2-1509, no* regular minister, priest, rabbi or accredited practitioner over the age of eighteen years, of any religious organization or denomination usually referred to as a church, shall be required in giving testimony as a witness in any criminal action to disclose any information communicated to him by the accused in a confidential manner, properly entrusted to him in his professional capacity and necessary to enable him to discharge the functions of his office according to the usual course of his practice or discipline, where such person so communicating such information about himself or another is seeking spiritual counsel and advice relative to and growing out of the information so imparted.

§ 63.2-1509. 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 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's 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 5 (§ 9.1-151 et seq.) of Chapter 1 of Title 9.1; ~~and~~

14. Any regular minister, priest, rabbi, or duly accredited practitioner, including a duly accredited Christian Science practitioner, over the age of eighteen years of any religious organization or

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58 *denomination usually referred to as a church. This subsection shall not apply to information required by*
59 *the doctrine of the religious organization or denomination to be kept in a confidential manner, unless*
60 *the person also acquires the information from a source other than the confidential communication.*

61 If neither the locality in which the child resides nor where the abuse or neglect is believed to have
62 occurred is known, then such report shall be made to the local department of the county or city where
63 the abuse or neglect was discovered or to the Department's toll-free child abuse and neglect hotline.

64 If an employee of the local department is suspected of abusing or neglecting a child, the report shall
65 be made to the court of the county or city where the abuse or neglect was discovered. Upon receipt of
66 such a report by the court, the judge shall assign the report to a local department that is not the
67 employer of the suspected employee for investigation or family assessment. The judge may consult with
68 the Department in selecting a local department to respond to the report or the complaint.

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

73 The initial report may be an oral report but such report shall be reduced to writing by the child
74 abuse coordinator of the local department on a form prescribed by the Board. Any person required to
75 make the report pursuant to this subsection shall disclose all information that is the basis for his
76 suspicion of abuse or neglect of the child and, upon request, shall make available to the child-protective
77 services coordinator and the local department, which is the agency of jurisdiction, any information,
78 records or reports that document the basis for the report. All persons required by this subsection to
79 report suspected abuse or neglect who maintain a record of a child who is the subject of such a report
80 shall cooperate with the investigating agency and shall make related information, records and reports
81 available to the investigating agency unless such disclosure violates the federal Family Educational
82 Rights and Privacy Act (20 U.S.C. § 1232(g)). Provision of such information, records and reports by a
83 health care provider shall not be prohibited by § 8.01-399. Criminal investigative reports received from
84 law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be
85 subject to public disclosure.

86 B. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall include
87 (i) a finding made by an attending physician within seven days of a child's birth that the results of a
88 blood or urine test conducted within forty-eight hours of the birth of the child indicate the presence of a
89 controlled substance not prescribed for the mother by a physician; (ii) a finding by an attending
90 physician made within forty-eight hours of a child's birth that the child was born dependent on a
91 controlled substance which was not prescribed by a physician for the mother and has demonstrated
92 withdrawal symptoms; (iii) a diagnosis by an attending physician made within seven days of a child's
93 birth that the child has an illness, disease or condition which, to a reasonable degree of medical
94 certainty, is attributable to in utero exposure to a controlled substance which was not prescribed by a
95 physician for the mother or the child; or (iv) a diagnosis by an attending physician made within seven
96 days of a child's birth that the child has fetal alcohol syndrome attributable to in utero exposure to
97 alcohol. When "reason to suspect" is based upon this subsection, such fact shall be included in the
98 report along with the facts relied upon by the person making the report.

99 C. Any person who makes a report or provides records or information pursuant to subsection A or
100 who testifies in any judicial proceeding arising from such report, records or information shall be immune
101 from any civil or criminal liability or administrative penalty or sanction on account of such report,
102 records, information or testimony, unless such person acted in bad faith or with malicious purpose.

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