

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 114

An Act to amend and reenact §§ 63.2-105 and 63.2-1503 of the Code of Virginia, relating to child abuse and neglect; multidisciplinary investigation teams.

[S 429]

Approved March 15, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-105 and 63.2-1503 of the Code of Virginia are amended and reenacted as follows:

§ 63.2-105. Confidential records and information concerning social services; child-protective services and child-placing agencies.

A. The local department 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 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 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 that is the subject of a report, including multi-disciplinary teams and family assessment and planning teams referenced in ~~subsection~~ *subsections J and K* of § 63.2-1503, law-enforcement agencies and attorneys for the Commonwealth; (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 § 63.2-100 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 local department has to remove the child from his custodian.

Whenever a local department 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.

B. Any person who has not been legally adopted in accordance with the provisions 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~~ 18 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 that had custody of the child.

An eligible person who is a resident of Virginia may apply for the court order provided for herein to (a) the circuit court of the county or city where the person resides or (b) the circuit court of the county or city where the principal office of the child-placing agency or local board that 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 that 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 upon the biological parents.

§ 63.2-1503. 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 that shall be staffed with qualified personnel pursuant to regulations adopted by the Board. 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 court and the judge determines that no local department within a reasonable geographic distance can impartially respond to the report, the court shall assign the report to the court services unit 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 regulations adopted by the 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 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~~ 24-hours-a-day, seven-days-per-week basis.

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

D. 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 attorney 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. *The local department shall develop, when practicable, memoranda of understanding for responding to reports of child abuse and neglect with local law enforcement and the attorney for the Commonwealth.*

E. 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.

F. 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.

G. 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.

H. 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 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 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.

I. 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 § 63.2-1505 or, if designated as a child-protective services differential response agency by the Department according to § 63.2-1504, a family assessment pursuant to § 63.2-1506.

J. The local department shall foster, when practicable, the creation, maintenance and coordination of hospital and community-based ~~multi-disciplinary~~ *multidisciplinary* 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 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 § 2.2-5207. ~~Multi-disciplinary~~ *Multidisciplinary* 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 §§ 63.2-102, 63.2-104 or § 63.2-105.

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.

K. The local department ~~shall~~ *may* develop, ~~where practical, memoranda of understanding for responding to reports of child abuse and neglect with local law enforcement and the attorney for the Commonwealth~~ *multidisciplinary teams to provide consultation to the local department during the investigation of selected cases involving child abuse or neglect, and to make recommendations regarding the prosecution of such cases. These teams may include, but are not limited to, members of the medical, mental health, legal and law-enforcement professions, including the attorney for the Commonwealth or his designee; a local child-protective services representative; and the guardian ad litem or other court-appointed advocate for the child. Any information exchanged for the purpose of such consultation shall not be considered a violation of §§ 63.2-102, 63.2-104 or § 63.2-105.*

L. 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.

M. 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.

N. 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.