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HOUSE BILL NO. 420

Offered January 14, 2004

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A BILL 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.

Patron—Watts

Referred to Committee on Health, Welfare and Institutions

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 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

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59 private or state-operated hospital, institution or other facility, or an employee of a school board is
60 suspected of abusing or neglecting a child in such hospital, institution or other facility, or public school,
61 the local department shall request the Department and the relevant private or state-operated hospital,
62 institution or other facility, or school board to assist in conducting a joint investigation in accordance
63 with regulations adopted by the Board, in consultation with the Departments of Education, Health,
64 Medical Assistance Services, Mental Health, Mental Retardation and Substance Abuse Services, Juvenile
65 Justice and Corrections.

66 B. The local department shall ensure, through its own personnel or through cooperative arrangements
67 with other local agencies, the capability of receiving reports or complaints and responding to them
68 promptly on a twenty-four-hours-a-day, seven-days-per-week basis.

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

71 D. The local department shall upon receipt of a complaint, report immediately to the attorney for the
72 Commonwealth and the local law-enforcement agency and make available to them the records of the
73 local department when abuse or neglect is suspected in any case involving (i) death of a child; (ii)
74 injury or threatened injury to the child in which a felony or Class 1 misdemeanor is also suspected; (iii)
75 any sexual abuse, suspected sexual abuse or other sexual offense involving a child, including but not
76 limited to the use or display of the child in sexually explicit visual material, as defined in § 18.2-374.1;
77 (iv) any abduction of a child; (v) any felony or Class 1 misdemeanor drug offense involving a child; or
78 (vi) contributing to the delinquency of a minor in violation of § 18.2-371, and provide the attorney for
79 the Commonwealth and the local law-enforcement agency with records of any complaints of abuse or
80 neglect involving the victim or the alleged perpetrator. The local department shall not allow reports of
81 the death of the victim from other local agencies to substitute for direct reports to the attorney for the
82 Commonwealth and the local law-enforcement agency. *The local department shall develop, when*
83 *practicable, memoranda of understanding for responding to reports of child abuse and neglect with*
84 *local law enforcement and the attorney for the Commonwealth.*

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

88 F. The local department shall use reasonable diligence to locate (i) any child for whom a report of
89 suspected abuse or neglect has been received and is under investigation, receiving family assessment, or
90 for whom a founded determination of abuse and neglect has been made and a child-protective services
91 case opened and (ii) persons who are the subject of a report that is under investigation or receiving
92 family assessment, if the whereabouts of the child or such persons are unknown to the local department.

93 G. When an abused or neglected child and the persons who are the subject of an open
94 child-protective services case have relocated out of the jurisdiction of the local department, the local
95 department shall notify the child-protective services agency in the jurisdiction to which such persons
96 have relocated, whether inside or outside of the Commonwealth, and forward to such agency relevant
97 portions of the case record. The receiving local department shall arrange protective and rehabilitative
98 services as required by this section.

99 H. When a child for whom a report of suspected abuse or neglect has been received and is under
100 investigation or receiving family assessment and the child and the child's parents or other persons
101 responsible for the child's care who are the subject of the report that is under investigation or family
102 assessment have relocated out of the jurisdiction of the local department, the local department shall
103 notify the child-protective services agency in the jurisdiction to which the child and such persons have
104 relocated, whether inside or outside of the Commonwealth, and complete such investigation or family
105 assessment by requesting such agency's assistance in completing the investigation or family assessment.
106 The local department that completes the investigation or family assessment shall forward to the receiving
107 agency relevant portions of the case record in order for the receiving agency to arrange protective and
108 rehabilitative services as required by this section.

109 I. Upon receipt of a report of child abuse or neglect, the local department shall determine the validity
110 of such report and shall make a determination to conduct an investigation pursuant to § 63.2-1505 or, if
111 designated as a child-protective services differential response agency by the Department according to
112 § 63.2-1504, a family assessment pursuant to § 63.2-1506.

113 J. The local department shall foster, when practicable, the creation, maintenance and coordination of
114 hospital and community-based multi-disciplinary teams that shall include where possible, but not be
115 limited to, members of the medical, mental health, social work, nursing, education, legal and
116 law-enforcement professions. Such teams shall assist the local departments in identifying abused and
117 neglected children; coordinating medical, social, and legal services for the children and their families;
118 developing innovative programs for detection and prevention of child abuse; promoting community
119 concern and action in the area of child abuse and neglect; and disseminating information to the general
120 public with respect to the problem of child abuse and neglect and the facilities and prevention and

121 treatment methods available to combat child abuse and neglect. These teams may be the family
122 assessment and planning teams established pursuant to § 2.2-5207. Multi-disciplinary teams may develop
123 agreements regarding the exchange of information among the parties for the purposes of the
124 investigation and disposition of complaints of child abuse and neglect, delivery of services, and child
125 protection. Any information exchanged in accordance with the agreement shall not be considered to be a
126 violation of the provisions of §§ 63.2-102, 63.2-104 or § 63.2-105.

127 The local department shall also coordinate its efforts in the provision of these services for abused and
128 neglected children with the judge and staff of the court.

129 K. The local department ~~shall~~ *may* develop, ~~where practical, memoranda of understanding for~~
130 ~~responding to reports of child abuse and neglect with local law enforcement and the attorney for the~~
131 ~~Commonwealth multidisciplinary teams to investigate cases involving child abuse or neglect, and to~~
132 ~~make recommendations regarding the prosecution of such cases. Where possible, teams shall include,~~
133 ~~but not be limited to, members of the medical, mental health, legal and law-enforcement professions,~~
134 ~~including the attorney for the Commonwealth or his designee; a local child-protective services~~
135 ~~representative; and the guardian ad litem or other court-appointed advocate for the child. Each team~~
136 ~~shall develop (i) procedures for investigating such cases and for interviewing abused or neglected~~
137 ~~children, and (ii) confidentiality statements and interagency agreements between the parties or agencies~~
138 ~~involved in the investigation. Any information exchanged in accordance with such agreements shall not~~
139 ~~be considered a violation of §§ 63.2-102, 63.2-104 or § 63.2-105.~~

140 L. The local department shall report annually on its activities concerning abused and neglected
141 children to the court and to the Child-Protective Services Unit in the Department on forms provided by
142 the Department.

143 M. Statements, or any evidence derived therefrom, made to local department child-protective services
144 personnel, or to any person performing the duties of such personnel, by any person accused of the
145 abuse, injury, neglect or death of a child after the arrest of such person, shall not be used in evidence in
146 the case - in - chief against such person in the criminal proceeding on the question of guilt or innocence
147 over the objection of the accused, unless the statement was made after such person was fully advised (i)
148 of his right to remain silent, (ii) that anything he says may be used against him in a court of law, (iii)
149 that he has a right to the presence of an attorney during any interviews, and (iv) that if he cannot afford
150 an attorney, one will be appointed for him prior to any questioning.

151 N. Notwithstanding any other provision of law, the local department, in accordance with Board
152 regulations, shall transmit information regarding founded complaints or family assessments and may
153 transmit other information regarding reports, complaints, family assessments and investigations involving
154 active duty military personnel or members of their household to family advocacy representatives of the
155 United States Armed Forces.