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SENATE BILL NO. 314

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Cuccinelli
on January 27, 2004)

(Patron Prior to Substitute—Senator Howell)

*A BILL to amend and reenact § 63.2-1509 of the Code of Virginia, relating to mandatory reporting of child abuse and neglect by ministers of religion; civil penalty.***Be it enacted by the General Assembly of Virginia:****1. That § 63.2-1509 of the Code of Virginia is amended and reenacted as follows:**

§ 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.

If neither the locality in which the child resides nor 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's 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 court of the county or city where the abuse or neglect was discovered. Upon receipt of such a report by the court, the judge shall assign the report to a local department that is not the employer of the suspected employee for investigation or family assessment. The judge may consult with the Department in selecting a local department to 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 Board. Any person required to make the report pursuant to this subsection *or subsection D* shall disclose all information that 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, which is the agency of jurisdiction, any information, records or reports that document the basis for the report. All persons required by this subsection *or by subsection D* to report suspected abuse or neglect who maintain a record of a child who is the subject of such a report shall cooperate with the investigating agency and shall make related information, records and reports available to the investigating agency unless such disclosure violates the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232(g)). Provision of such information, records and reports by a health care provider shall not be prohibited by § 8.01-399. Criminal investigative reports received from law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be subject to public disclosure.

B. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall include

60 (i) a finding made by an attending physician within seven days of a child's birth that the results of a
61 blood or urine test conducted within forty-eight hours of the birth of the child indicate the presence of a
62 controlled substance not prescribed for the mother by a physician; (ii) a finding by an attending
63 physician made within forty-eight hours of a child's birth that the child was born dependent on a
64 controlled substance which was not prescribed by a physician for the mother and has demonstrated
65 withdrawal symptoms; (iii) a diagnosis by an attending physician made within seven days of a child's
66 birth that the child has an illness, disease or condition which, to a reasonable degree of medical
67 certainty, is attributable to in utero exposure to a controlled substance which was not prescribed by a
68 physician for the mother or the child; or (iv) a diagnosis by an attending physician made within seven
69 days of a child's birth that the child has fetal alcohol syndrome attributable to in utero exposure to
70 alcohol. When "reason to suspect" is based upon this subsection, such fact shall be included in the
71 report along with the facts relied upon by the person making the report.

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

77 D. Any regular minister, priest, rabbi or duly accredited practitioner over the age of 18 years of any
78 religious organization or denomination usually referred to as a church who has reason to suspect that a
79 child has been abused or neglected by another regular minister, priest, rabbi or duly accredited
80 practitioner shall report the matter immediately to the local department or to the Department's toll-free
81 child abuse and neglect hotline in accordance with the provisions of subsection A. This subsection shall
82 not apply to (i) information required by the doctrine of the religious organization or denomination to be
83 kept in a confidential manner or (ii) information that would be subject to § 8.01-400 or § 19.2-271.3 if
84 offered as evidence in court.

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