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SENATE BILL NO. 935

Offered January 10, 2007

Prefiled January 9, 2007

A BILL to amend and reenact § 63.2-1509 and 63.2-1606 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 3.1-796.104:2, 63.2-1509.1, and 63.2-1606.1, relating to mandatory cross-reporting by protective services agencies of suspected child abuse and animal abuse.

Patrons—Ticer; Delegates: Scott, J.M. and Watts

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-1509 and 63.2-1606 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 3.1-796.104:2, 63.2-1509.1, and 63.2-1606.1 as follows:

3.1-796.104:2. Animal control officers to report suspected child or adult abuse or neglect.

A. Any animal control officer who has knowledge of, or reasonably believes that a child has been the victim of abuse or neglect shall report the known or suspected abuse or neglect 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 local department of social services' toll-free child abuse and neglect hotline, in accordance with § 63.2-1509.

B. Any animal control officer who has knowledge of, or reasonably believes that an adult has been the victim of abuse, neglect or exploitation shall report the known or suspected abuse or neglect immediately to the local department of social services of the county or city wherein the adult resides or to the local department of social services' adult protective services hotline in accordance with § 63.2-1606.

§ 63.2-1509. (Effective January 1, 2007) 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 mental health professional;

8. Any law-enforcement officer;

9. Any animal control 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;

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;

14. Any person, over the age of 18 years, who has received training approved by the Department of Social Services for the purposes of recognizing and reporting child abuse and neglect; and

15. Any person employed by a local department as defined in § 63.2-100 who determines eligibility for public assistance.

This subsection shall not apply to any regular minister, priest, rabbi, imam, or duly accredited practitioner of any religious organization or denomination usually referred to as a church as it relates to (i) information required by the doctrine of the religious organization or denomination to be kept in a confidential manner or (ii) information that would be subject to § 8.01-400 or 19.2-271.3 if offered as

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SB935

59 evidence in court.

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

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

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

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

85 B. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall include
86 (i) a finding made by an attending physician within seven days of a child's birth that the results of a
87 blood or urine test conducted within 48 hours of the birth of the child indicate the presence of a
88 controlled substance not prescribed for the mother by a physician; (ii) a finding by an attending
89 physician made within 48 hours of a child's birth that the child was born dependent on a controlled
90 substance which was not prescribed by a physician for the mother and has demonstrated withdrawal
91 symptoms; (iii) a diagnosis by an attending physician made within seven days of a child's birth that the
92 child has an illness, disease or condition which, to a reasonable degree of medical certainty, is
93 attributable to in utero exposure to a controlled substance which was not prescribed by a physician for
94 the mother or the child; or (iv) a diagnosis by an attending physician made within seven days of a
95 child's birth that the child has fetal alcohol syndrome attributable to in utero exposure to alcohol. When
96 "reason to suspect" is based upon this subsection, such fact shall be included in the report along with
97 the facts relied upon by the person making the report.

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

103 D. Any person required to file a report pursuant to this section who fails to do so within 72 hours of
104 his first suspicion of child abuse or neglect shall be fined not more than \$500 for the first failure and
105 for any subsequent failures not less than \$100 nor more than \$1,000.

106 *63.2-1509.1. Physicians, nurses, teachers, etc. to report suspected animal abuse.*

107 *Any person required to file a report pursuant to § 63.2-1509 who, while acting within his*
108 *professional capacity or within the scope of his employment, has knowledge of or observes an animal*
109 *that he knows or reasonably suspects has been the victim of cruelty, abuse, or neglect, shall report the*
110 *known or suspected cruelty, abuse, or neglect to the local animal control officer within two business*
111 *days of receiving the information concerning the animal. The report may be made in writing, by*
112 *facsimile, or by telephone and shall include all information that is the basis for the reporting party's*
113 *suspicion of cruelty, abuse, or neglect.*

114 § 63.2-1606. Protection of aged or incapacitated adults; mandated and voluntary reporting.

115 A. Matters giving reason to suspect the abuse, neglect or exploitation of adults shall be reported
116 immediately upon the reporting person's determination that there is such reason to suspect. Medical
117 facilities inspectors of the Department of Health are exempt from reporting suspected abuse immediately
118 while conducting federal inspection surveys in accordance with § 1864 of Title XVIII and Title XIX of
119 the Social Security Act, as amended, of certified nursing facilities as defined in § 32.1-123. Reports shall
120 be made to the local department or the adult protective services hotline in accordance with requirements

of this section by the following persons acting in their professional capacity:

1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503, with the exception of persons licensed by the Board of Veterinary Medicine;

2. Any mental health services provider as defined in § 54.1-2400.1;

3. Any emergency medical services personnel certified by the Board of Health pursuant to § 32.1-111.5;

4. Any guardian or conservator of an adult;

5. Any person employed by or contracted with a public or private agency or facility and working with adults in an administrative, supportive or direct care capacity;

6. Any person providing full, intermittent or occasional care to an adult for compensation, including but not limited to, companion, chore, homemaker, and personal care workers; and

7. Any law-enforcement officer; and

8. Any animal control officer.

B. The report shall be made in accordance with subsection A to the local department of the county or city wherein the adult resides or wherein the adult abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline. Nothing in this section shall be construed to eliminate or supersede any other obligation to report as required by law. If a person required to report under this section receives information regarding abuse, neglect or exploitation while providing professional services in a hospital, nursing facility or similar institution, then he may, in lieu of reporting, notify the person in charge of the institution or his designee, who shall report such information, in accordance with the institution's policies and procedures for reporting such matters, immediately upon his determination that there is reason to suspect abuse, neglect or exploitation. Any person required to make the report or notification required by this subsection shall do so either orally or in writing and shall disclose all information that is the basis for the suspicion of adult abuse, neglect or exploitation. Upon request, any person required to make the report shall make available to the adult protective services worker and the local department investigating the reported case of adult abuse, neglect or exploitation any information, records or reports which document the basis for the report. All persons required to report suspected adult abuse, neglect or exploitation shall cooperate with the investigating adult protective services worker of a local department and shall make information, records and reports which are relevant to the investigation available to such worker to the extent permitted by state and federal law. 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.

C. Any financial institution staff who suspects that an adult has been exploited financially may report such suspected exploitation to the local department of the county or city wherein the adult resides or wherein the exploitation is believed to have occurred or to the adult protective services hotline. For purposes of this section, financial institution staff means any employee of a bank, savings institution, credit union, securities firm, accounting firm, or insurance company.

D. Any person other than those specified in subsection A who suspects that an adult is an abused, neglected or exploited adult may report the matter to the local department of the county or city wherein the adult resides or wherein the abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline.

E. Any person who makes a report or provides records or information pursuant to subsection A, C or D, or who testifies in any judicial proceeding arising from such report, records or information, or who takes or causes to be taken with the adult's or the adult's legal representative's informed consent photographs, video recordings, or appropriate medical imaging of the adult who is subject of a report shall be immune from any civil or criminal liability on account of such report, records, information, photographs, video recordings, appropriate medical imaging or testimony, unless such person acted in bad faith or with a malicious purpose.

F. An employer of a mandated reporter shall not prohibit a mandated reporter from reporting directly to the local department or to the adult protective services hotline. Employers whose employees are mandated reporters shall notify employees upon hiring of the requirement to report.

G. Any person 14 years of age or older who makes or causes to be made a report of adult abuse, neglect, or exploitation that he knows to be false shall be guilty of a Class 4 misdemeanor. Any subsequent conviction of this provision shall be a Class 2 misdemeanor.

H. Any person who fails to make a required report or notification pursuant to subsection A shall be subject to a civil penalty of not more than \$500 for the first failure and not less than \$100 nor more than \$1,000 for any subsequent failures. Civil penalties under subdivision A 7 shall be determined by a court of competent jurisdiction, in its discretion. All other civil penalties under this section shall be determined by the Commissioner or his designee. The Board shall establish by regulation a process for imposing and collecting civil penalties, and a process for appeal of the imposition of such penalty pursuant to § 2.2-4026 of the Administrative Process Act.

182 I. Any mandated reporter who has reasonable cause to suspect that an adult died as a result of abuse
183 or neglect shall immediately report such suspicion to the appropriate medical examiner and to the
184 appropriate law-enforcement agency, notwithstanding the existence of a death certificate signed by a
185 licensed physician. The medical examiner and the law-enforcement agency shall receive the report and
186 determine if an investigation is warranted. The medical examiner may order an autopsy. If an autopsy is
187 conducted, the medical examiner shall report the findings to law enforcement, as appropriate, and to the
188 local department or to the adult protective services hotline.

189 J. No person or entity shall be obligated to report any matter if the person or entity has actual
190 knowledge that the same matter has already been reported to the local department or to the adult
191 protective services hotline.

192 K. All law-enforcement departments and other state and local departments, agencies, authorities and
193 institutions shall cooperate with each adult protective services worker of a local department in the
194 detection, investigation and prevention of adult abuse, neglect and exploitation.

195 *63.2-1606.1 Cross-reporting of suspected animal abuse required.*

196 *Any person required to file a report pursuant to § 63.2-1606 or any state or local adult protective*
197 *services personnel or any person performing the duties of such personnel who has knowledge of or*
198 *observes an animal that he knows or reasonably suspects has been the victim of cruelty, abuse, or*
199 *neglect shall report the known or suspected cruelty, abuse, or neglect to the local animal control officer*
200 *within two business days of receiving the information concerning the animal. The report may be made*
201 *in writing, by facsimile, or by telephone and shall include all information that is the basis for the*
202 *reporting party's suspicion of cruelty, abuse, or neglect.*