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SENATE BILL NO. 296

Offered January 11, 2012

Prefiled January 10, 2012

A BILL to amend and reenact § 63.2-1509 of the Code of Virginia, relating to suspected child abuse and neglect; mandatory reporting; penalties.

Patrons—Puller and Colgan

Referred to Committee on Rehabilitation and Social Services

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. Requirement that certain injuries to children be reported by physicians, nurses, teachers, etc.; 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 or animal control officer;
9. Any mediator eligible to receive court referrals pursuant to § 8.01-576.8;
10. 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;
11. Any person associated with or employed by any private organization responsible for the care, custody or control of children;
12. 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;
13. 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;
14. Any person employed by a local department as defined in § 63.2-100 who determines eligibility for public assistance; and
15. Any emergency medical services personnel certified by the Board of Health pursuant to § 32.1-111.5, unless such personnel immediately reports the matter directly to the attending physician at the hospital to which the child is transported, who shall make such report forthwith.

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 evidence in court.

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.

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

72 B. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall include
73 (i) a finding made by an attending physician within seven days of a child's birth that the results of a
74 blood or urine test conducted within 48 hours of the birth of the child indicate the presence of a
75 controlled substance not prescribed for the mother by a physician; (ii) a finding by an attending
76 physician made within 48 hours of a child's birth that the child was born dependent on a controlled
77 substance which was not prescribed by a physician for the mother and has demonstrated withdrawal
78 symptoms; (iii) a diagnosis by an attending physician made within seven days of a child's birth that the
79 child has an illness, disease or condition which, to a reasonable degree of medical certainty, is
80 attributable to in utero exposure to a controlled substance which was not prescribed by a physician for
81 the mother or the child; or (iv) a diagnosis by an attending physician made within seven days of a
82 child's birth that the child has fetal alcohol syndrome attributable to in utero exposure to alcohol. When
83 "reason to suspect" is based upon this subsection, such fact shall be included in the report along with
84 the facts relied upon by the person making the report.

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

90 D. Any person required to file a report pursuant to this section who fails to do so within ~~72~~ 24 hours
91 of his first suspicion of child abuse or neglect ~~shall be fined not more than \$500~~ *is guilty of a Class 1*
92 *misdemeanor* for the first failure and *a Class 6 felony* for any subsequent failures ~~not less than \$100 nor~~
93 ~~more than \$1,000.~~

94 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
95 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
96 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
97 **890 of the Acts of Assembly of 2011 requires the Virginia Criminal Sentencing Commission to**
98 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**
99 **necessary appropriation cannot be determined for periods of commitment to the custody of the**
100 **Department of Juvenile Justice.**