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SENATE BILL NO. 448

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions on February 21, 2012)

(Patron Prior to Substitute—Senator Vogel)

A BILL to amend and reenact §§ 16.1-241.3 and 63.2-1509 of the Code of Virginia, relating to suspected child abuse; substance exposed infants; reporting by health care providers.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-241.3 and 63.2-1509 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-241.3. Newborn children; substance abuse.

Upon the filing of a petition, ~~within twenty-one days of a child's birth~~, alleging that an investigation has been commenced in response to a report of suspected abuse or neglect of the child based upon a factor specified in subsection B of § 63.2-1509, the court may enter any order authorized pursuant to this chapter which the court deems necessary to protect the health and welfare of the child pending final disposition of the investigation pursuant to Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2 or other proceedings brought pursuant to this chapter. Such orders may include, but shall not be limited to, an emergency removal order pursuant to § 16.1-251, a preliminary protective order pursuant to § 16.1-253 or an order authorized pursuant to subdivisions A 1 through 4 of ~~subsection A~~ of § 16.1-278.2. The fact that an order was entered pursuant to this section shall not be admissible as evidence in any criminal, civil or administrative proceeding other than a proceeding to enforce the order.

The order shall be effective for a limited duration not to exceed the period of time necessary to conclude the investigation and any proceedings initiated pursuant to Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2, but shall be a final order subject to appeal.

§ 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.

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. § 1232g). 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~~ *a health care provider* within ~~seven days of a child's birth~~  
87 *six weeks of the birth of a child* that the results of a ~~blood or urine test conducted within 48 hours of~~  
88 *the birth of the child toxicology studies of the child* indicate the presence of a controlled substance not  
89 prescribed for the mother by a physician; (ii) a finding ~~made by an attending physician made within 48~~  
90 *hours of a child's birth a health care provider within six weeks of the birth of a child* that the child was  
91 born dependent on a controlled substance which was not prescribed by a physician for the mother and  
92 has demonstrated withdrawal symptoms; (iii) a diagnosis ~~made by an attending physician made within~~  
93 *seven days of a health care provider at any time following* a child's birth that the child has an illness,  
94 disease or condition which, to a reasonable degree of medical certainty, is attributable to in utero  
95 exposure to a controlled substance which was not prescribed by a physician for the mother or the child;  
96 or (iv) a diagnosis ~~made by an attending physician made within seven days of a health care provider at~~  
97 *any time following* a child's birth that the child has ~~fetal alcohol syndrome~~ *a fetal alcohol spectrum*  
98 *disorder* attributable to in utero exposure to alcohol. When "reason to suspect" is based upon this  
99 subsection, such fact shall be included in the report along with the facts relied upon by the person  
100 making the report.

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

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