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HOUSE BILL NO. 1527

Offered January 14, 2015

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A *BILL to amend and reenact §§ 16.1-241.3, 63.2-1505, 63.2-1506, 63.2-1507, 63.2-1509, 63.2-1510, and 63.2-1511 of the Code of Virginia, relating to mandatory reports of child abuse or neglect; sex offenses.*

Patrons—Berg and Marshall, R.G.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-241.3, 63.2-1505, 63.2-1506, 63.2-1507, 63.2-1509, 63.2-1510, and 63.2-1511 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 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 *clauses (i) through (iv)* of 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 § 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.

§ 63.2-1505. Investigations by local departments.

A. An investigation requires the collection of information necessary to determine:

1. The immediate safety needs of the child;
2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;
3. Risk of future harm to the child;
4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services;
5. Whether abuse or neglect has occurred;
6. If abuse or neglect has occurred, who abused or neglected the child; and
7. A finding of either founded or unfounded based on the facts collected during the investigation.

B. If the local department responds to the report or complaint by conducting an investigation, the local department shall:

1. Make immediate investigation and, if the report or complaint was based upon one of the factors specified in *clauses (i) through (iv)* of subsection B of § 63.2-1509, the local department may file a petition pursuant to § 16.1-241.3;

2. Complete a report and transmit it forthwith to the Department, except that no such report shall be transmitted in cases in which the cause to suspect abuse or neglect is one of the factors specified in *clauses (i) through (iv)* of subsection B of § 63.2-1509 and the mother sought substance abuse counseling or treatment prior to the child's birth;

3. Consult with the family to arrange for necessary protective and rehabilitative services to be provided to the child and his family;

4. Petition the court for services deemed necessary including, but not limited to, removal of the child or his siblings from their home;

5. Determine within 45 days if a report of abuse or neglect is founded or unfounded and transmit a report to such effect to the Department and to the person who is the subject of the investigation. However, upon written justification by the local department, the time for such determination may be extended not to exceed a total of 60 days or, in the event that the investigation is being conducted in cooperation with a law-enforcement agency and both parties agree that circumstances so warrant, as stated in the written justification, the time for such determination may be extended not to exceed 90 days. If through the exercise of reasonable diligence the local department is unable to find the child who

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59 is the subject of the report, the time the child cannot be found shall not be computed as part of the total
60 time period allowed for the investigation and determination and documentation of such reasonable
61 diligence shall be placed in the record. In cases involving the death of a child or alleged sexual abuse of
62 a child who is the subject of the report, the time during which records necessary for the investigation of
63 the complaint but not created by the local department, including autopsy or medical or forensic records
64 or reports, are not available to the local department due to circumstances beyond the local department's
65 control shall not be computed as part of the total time period allowed for the investigation and
66 determination, and documentation of the circumstances that resulted in the delay shall be placed in the
67 record;

68 6. If a report of abuse or neglect is unfounded, transmit a report to such effect to the complainant
69 and parent or guardian and the person responsible for the care of the child in those cases where such
70 person was suspected of abuse or neglect; and

71 7. If a report of child abuse and neglect is founded, and the subject of the report is a full-time,
72 part-time, permanent, or temporary employee of a school division located within the Commonwealth,
73 notify the relevant school board of the founded complaint. Any information exchanged for the purposes
74 of this subsection shall not be considered a violation of § 63.2-102, 63.2-104, or 63.2-105.

75 C. Each local board may obtain and consider, in accordance with regulations adopted by the Board,
76 statewide criminal history record information from the Central Criminal Records Exchange and results of
77 a search of the child abuse and neglect central registry of any individual who is the subject of a child
78 abuse or neglect investigation conducted under this section when there is evidence of child abuse or
79 neglect and the local board is evaluating the safety of the home and whether removal will protect a
80 child from harm. The local board also may obtain such a criminal records or registry search on all adult
81 household members residing in the home where the individual who is the subject of the investigation
82 resides and the child resides or visits. If a child abuse or neglect petition is filed in connection with
83 such removal, a court may admit such information as evidence. Where the individual who is the subject
84 of such information contests its accuracy through testimony under oath in hearing before the court, no
85 court shall receive or consider the contested criminal history record information without certified copies
86 of conviction. Further dissemination of the information provided to the local board is prohibited, except
87 as authorized by law.

88 D. A person who has not previously participated in the investigation of complaints of child abuse or
89 neglect in accordance with this chapter shall not participate in the investigation of any case involving a
90 complaint of alleged sexual abuse of a child unless he (i) has completed a Board-approved training
91 program for the investigation of complaints involving alleged sexual abuse of a child or (ii) is under the
92 direct supervision of a person who has completed a Board-approved training program for the
93 investigation of complaints involving alleged sexual abuse of a child. No individual may make a
94 determination of whether a case involving a complaint of alleged sexual abuse of a child is founded or
95 unfounded unless he has completed a Board-approved training program for the investigation of
96 complaints involving alleged sexual abuse of a child.

97 **§ 63.2-1506. Family assessments by local departments.**

98 A. A family assessment requires the collection of information necessary to determine:

- 99 1. The immediate safety needs of the child;
100 2. The protective and rehabilitative services needs of the child and family that will deter abuse or
101 neglect;
102 3. Risk of future harm to the child; and
103 4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the
104 family is unable or unwilling to participate in services.

105 B. When a local department has been designated as a child-protective services differential response
106 system participant by the Department pursuant to § 63.2-1504 and responds to the report or complaint
107 by conducting a family assessment, the local department shall:

108 1. Conduct an immediate family assessment and, if the report or complaint was based upon one of
109 the factors specified in *clauses (i) through (iv) of subsection B of § 63.2-1509*, the local department may
110 file a petition pursuant to § 16.1-241.3;

111 2. Immediately contact the subject of the report and the family of the child alleged to have been
112 abused or neglected and give each a written and an oral explanation of the family assessment procedure.
113 The family assessment shall be in writing and shall be completed in accordance with Board regulation;

114 3. Complete the family assessment within forty-five days and transmit a report to such effect to the
115 Department and to the person who is the subject of the family assessment. However, upon written
116 justification by the local department, the family assessment may be extended, not to exceed a total of
117 sixty days;

118 4. Consult with the family to arrange for necessary protective and rehabilitative services to be
119 provided to the child and his family. Families have the option of declining the services offered as a
120 result of the family assessment. If the family declines the services, the case shall be closed unless the

local department determines that sufficient cause exists to redetermine the case as one that needs to be investigated. In no instance shall a case be redetermined as an investigation solely because the family declines services;

5. Petition the court for services deemed necessary;

6. Make no disposition of founded or unfounded for reports in which a family assessment is completed. Reports in which a family assessment is completed shall not be entered into the central registry contained in § 63.2-1515; and

7. Commence an immediate investigation, if at any time during the completion of the family assessment, the local department determines that an investigation is required.

C. When a local department has been designated as a child-protective services differential response agency by the Department, the local department may investigate any report of child abuse or neglect, but the following valid reports of child abuse or neglect shall be investigated: (i) sexual abuse, (ii) child fatality, (iii) abuse or neglect resulting in serious injury as defined in § 18.2-371.1, (iv) child has been taken into the custody of the local department, or (v) cases involving a caretaker at a state-licensed child day center, religiously exempt child day center, licensed, registered or approved family day home, private or public school, hospital or any institution.

§ 63.2-1507. Cooperation by state entities.

All law-enforcement departments and other state and local departments, agencies, authorities and institutions shall cooperate with each child-protective services coordinator of a local department and any multi-discipline teams in the detection and prevention of child abuse or neglect and sexual acts committed upon a child in violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 or § 18.2-370, 18.2-370.01, or 18.2-370.1.

§ 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 or family-services specialist;
 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 18 years of age or older associated with or employed by any public or 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 18 years of age or older 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;
 15. Any emergency medical services provider certified by the Board of Health pursuant to § 32.1-111.5, unless such provider immediately reports the matter directly to the attending physician at the hospital to which the child is transported, who shall make such report forthwith;
 16. Any athletic coach, director or other person 18 years of age or older employed by or volunteering with a private sports organization or team;
 17. Administrators or employees 18 years of age or older of public or private day camps, youth centers and youth recreation programs; and
 18. Any person employed by a public or private institution of higher education other than an attorney who is employed by a public or private institution of higher education as it relates to information gained in the course of providing legal representation to a client.
- 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

182 (i) information required by the doctrine of the religious organization or denomination to be kept in a
183 confidential manner or (ii) information that would be subject to § 8.01-400 or 19.2-271.3 if offered as
184 evidence in court.

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

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

193 If the information is received by a teacher, staff member, resident, intern or nurse in the course of
194 professional services in a hospital, school or similar institution, such person may, in place of said report,
195 immediately notify the person in charge of the institution or department, or his designee, who shall
196 make such report forthwith. If the initial report of suspected abuse or neglect is made to the person in
197 charge of the institution or department, or his designee, pursuant to this subsection, such person shall
198 notify the teacher, staff member, resident, intern or nurse who made the initial report when the report of
199 suspected child abuse or neglect is made to the local department or to the Department's toll-free child
200 abuse and neglect hotline, and of the name of the individual receiving the report, and shall forward any
201 communication resulting from the report, including any information about any actions taken regarding
202 the report, to the person who made the initial report.

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

216 B. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall include
217 (i) a finding made by a health care provider within six weeks of the birth of a child that the results of
218 toxicology studies of the child indicate the presence of a controlled substance not prescribed for the
219 mother by a physician; (ii) a finding made by a health care provider within six weeks of the birth of a
220 child that the child was born dependent on a controlled substance which was not prescribed by a
221 physician for the mother and has demonstrated withdrawal symptoms; (iii) a diagnosis made by a health
222 care provider at any time following a child's birth that the child has an illness, disease or condition
223 which, to a reasonable degree of medical certainty, is attributable to in utero exposure to a controlled
224 substance which was not prescribed by a physician for the mother or the child; ~~or~~ (iv) a diagnosis made
225 by a health care provider at any time following a child's birth that the child has a fetal alcohol spectrum
226 disorder attributable to in utero exposure to alcohol; *or (v) a finding that a sexual act has been*
227 *committed upon a child in violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 or §*
228 *18.2-370, 18.2-370.01, or 18.2-370.1.* When "reason to suspect" is based upon this subsection, such fact
229 shall be included in the report along with the facts relied upon by the person making the report.

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

235 D. Any person required to file a report pursuant to this section who fails to do so as soon as
236 possible, but not longer than 24 hours after having reason to suspect a reportable offense of child abuse
237 or neglect, shall be fined not more than \$500 for the first failure and for any subsequent failures not less
238 than \$1,000. In cases evidencing acts of rape, sodomy, or object sexual penetration as defined in Article
239 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, a person who knowingly and intentionally fails to make
240 the report required pursuant to this section shall be guilty of a Class 1 misdemeanor.

241 E. No person shall be required to make a report pursuant to this section if the person has actual
242 knowledge that the same matter has already been reported to the local department or the Department's
243 toll-free child abuse and neglect hotline.

§ 63.2-1510. Complaints by others of certain injuries to children.

Any person who suspects that a child is an abused or neglected child may make a complaint concerning such child, except as hereinafter provided, 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. If an employee of the local department is suspected of abusing or neglecting a child, the complaint 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; or, if the judge believes that no local department in a reasonable geographic distance can be impartial in responding to the reported case, the judge shall assign the report to the court service unit of his court for evaluation. The judge may consult with the Department in selecting a local department to respond to the report or complaint. Such a complaint may be oral or in writing and shall disclose all information which is the basis for the suspicion of abuse or neglect of the child. *For purposes of this section, "abuse" or "neglect" shall include a sexual act committed upon a child in violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 or § 18.2-370, 18.2-370.01, or 18.2-370.1.*

§ 63.2-1511. Complaints of abuse and neglect against school personnel; interagency agreement.

A. If a teacher, principal or other person employed by a local school board or employed in a school operated by the Commonwealth is suspected of abusing or neglecting a child in the course of his educational employment, the complaint shall be investigated in accordance with §§ 63.2-1503, 63.2-1505 and 63.2-1516.1. Pursuant to § 22.1-279.1, no teacher, principal or other person employed by a school board or employed in a school operated by the Commonwealth shall subject a student to corporal punishment. However, this prohibition of corporal punishment shall not be deemed to prevent (i) the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) the use of reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) the use of reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) the use of reasonable and necessary force for self-defense or the defense of others; or (v) the use of reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or paraphernalia that are upon the person of the student or within his control. In determining whether the actions of a teacher, principal or other person employed by a school board or employed in a school operated by the Commonwealth are within the exceptions provided in this section, the local department shall examine whether the actions at the time of the event that were made by such person were reasonable.

B. For purposes of this section, ~~corporal~~ *"abuse" or "neglect" shall include a sexual act committed upon a child in violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 or § 18.2-370, 18.2-370.01, or 18.2-370.1. "Corporal punishment," "abuse," or "neglect" shall not include physical pain, injury or discomfort caused by the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control as permitted in clause (i) of subsection A or the use of reasonable and necessary force as permitted by clauses (ii), (iii), (iv), and (v) of subsection A, or by participation in practice or competition in an interscholastic sport, or participation in physical education or an extracurricular activity.*

C. If, after an investigation of a complaint under this section, the local department determines that the actions or omissions of a teacher, principal, or other person employed by a local school board or employed in a school operated by the Commonwealth were within such employee's scope of employment and were taken in good faith in the course of supervision, care, or discipline of students, then the standard in determining if a report of abuse or neglect is founded is whether such acts or omissions constituted gross negligence or willful misconduct.

D. Each local department and local school division shall adopt a written interagency agreement as a protocol for investigating child abuse and neglect reports. The interagency agreement shall be based on recommended procedures for conducting investigations developed by the Departments of Education and Social Services.