

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 643

An Act to amend and reenact §§ 63.1-209 and 63.1-248.6, as they are currently effective and as they may become effective, and § 63.1-248.9 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 32.1-283.1, relating to child protective services; penalties.

[H 627]

Approved April 10, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.1-209 and 63.1-248.6, as they are currently effective and as they may become effective, and § 63.1-248.9 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 32.1-283.1 as follows:

§ 32.1-283.1. Child Fatality Review Advisory Committee.

There is hereby created the Child Fatality Review Advisory Committee which shall develop procedures to ensure that child deaths occurring in Virginia are reviewed in a systematic way. The Committee shall make recommendations (i) for development of a protocol for the establishment and operation of child death review teams, to include identification of cases to be reviewed and procedures for coordination among the agencies and professionals involved, (ii) to improve the identification, data collection and record keeping of the causes of child death, (iii) on prevention and education programs, and (iv) for training to improve the investigation of child deaths.

The Committee shall be chaired by the Secretary of Health and Human Resources and shall be composed of the following persons or their designees: the Commissioners of the Departments of Health, Mental Health, Mental Retardation and Substance Abuse Services, and Social Services; the Director of the Department of Criminal Justice Services; and the Chief Medical Examiner. The Secretary of Health and Human Resources shall appoint one representative of each of the following entities: local law-enforcement agencies, local departments of social services, the Virginia Pediatric Society, emergency medical personnel, Commonwealth's attorneys, and community services boards.

The Committee shall submit an annual report to the Governor and the General Assembly.

§ 63.1-209. Confidential records.

A. The records of all child-welfare agencies and persons received or placed out by them and the facts learned by them concerning such persons and their parents or relatives, shall be confidential information, provided that the Commissioner, the State Board and their agents shall have access to such information, that it shall be disclosed upon the proper order of any court, and that it may be disclosed to any person having a legitimate interest in the placement of any such person.

The local department of social services may disclose the contents of records and information learned during the course of a child protective services investigation or during the provision of child protective services to a family, without a court order and without the consent of the family, to a person having a legitimate interest when in the judgment of the local department of social services such disclosure is in the best interest of the child who is the subject of the records. Persons having a legitimate interest in child protective services records of local departments of social services include, but are not limited to, (i) any person who is responsible for investigating a report of known or suspected abuse or neglect or for providing services to a child or family which is the subject of a report, including multi-disciplinary teams and family assessment and planning teams referenced in subsection F of § 63.1-248.6, law-enforcement agencies and Commonwealth's attorneys; (ii) child welfare or human services agencies of the Commonwealth or its political subdivisions when those agencies request information to determine the compliance of any person with a child protective services plan or an order of any court; (iii) personnel of the school or child day program as defined in § 63.1-195 attended by the child so that the local department can receive information from such personnel on an ongoing basis concerning the child's health and behavior, and the activities of the child's custodian; and (iv) a parent, grandparent, or any other person when such parent, grandparent or other person would be considered by the local department as a potential caretaker of the child in the event the department has to remove the child from his custodian.

Whenever a local department of social services exercises its discretion to release otherwise confidential information to any person who meets one or more of these descriptions, the local department shall be presumed to have exercised its discretion in a reasonable and lawful manner.

It shall be unlawful for any officer, agent or employee of any child-welfare agency, for the Commissioner, the State Board or their agents or employees, and for any person who has held any such position, and for any other person to whom any such information is disclosed as hereinabove provided, to disclose, directly or indirectly, any such confidential information, except as herein provided. Every violation of this section shall constitute a *Class 1* misdemeanor and be punishable as such.

B. Any person who has attained his majority, who has not been legally adopted in accordance with

the provisions of Chapter 11 (§ 63.1-220 et seq.) of this title, who was not a child for whom all parental rights and responsibilities have been terminated, and who believes that he has been placed out by a child-placing agency, shall have the right to demand and receive from the Commissioner, the State Board, or any such agency, such information as any of them may have concerning his own parents or relatives.

C. Any person who has not been legally adopted in accordance with the provisions of Chapter 11 (§ 63.1-220 et seq.) of this title and who was a child for whom all parental rights and responsibilities have been terminated, shall not have access to any information from a child-placing agency with respect to the identity of the biological family, except (i) upon application of the child who is eighteen or more years of age, (ii) upon order of a circuit court entered upon good cause shown, and (iii) after notice to and opportunity for hearing by the applicant for such order and the child-placing agency or local board of public welfare or social services which had custody of the child.

An eligible person who is a resident of Virginia may apply for the court order provided for herein to (i) the circuit court of the county or city where the person resides or (ii) the circuit court of the county or city where the principal office of the child-placing agency or local board of public welfare or social services which controls the information sought by the person is located. An eligible person who is not a resident of Virginia shall apply for such a court order to the circuit court of the county or city where the principal office of the child-placing agency or local board of public welfare or social services which controls the information sought by the person is located.

If the identity and whereabouts of the biological family are known to the agency or local board, the court may require the agency or local board to advise the biological parents of the pendency of the application for such order. In determining good cause for the disclosure of such information, the court shall consider the relative effects of such action upon the applicant for such order and the biological parents.

D. This section shall not apply to the disposition of adoption records, reports and information which is governed by the provisions of § 63.1-236.

§ 63.1-209. (Delayed effective date) Confidential records.

A. The records of all child-welfare agencies and persons received or placed out by them and the facts learned by them concerning such persons and their parents or relatives, shall be confidential information, provided that the Commissioner, the State Board and their agents shall have access to such information, that it shall be disclosed upon the proper order of any court, and that it may be disclosed to any person having a legitimate interest in the placement of any such person.

The local department of social services may disclose the contents of records and information learned during the course of a child protective services investigation or during the provision of child protective services to a family, without a court order and without the consent of the family, to a person having a legitimate interest when in the judgment of the local department of social services such disclosure is in the best interest of the child who is the subject of the records. Persons having a legitimate interest in child protective services records of local departments of social services include, but are not limited to, (i) any person who is responsible for investigating a report of known or suspected abuse or neglect or for providing services to a child or family which is the subject of a report, including multi-disciplinary teams and family assessment and planning teams referenced in subsection F of § 63.1-248.6, law-enforcement agencies and Commonwealth's attorneys; (ii) child welfare or human services agencies of the Commonwealth or its political subdivisions when those agencies request information to determine the compliance of any person with a child protective services plan or an order of any court; (iii) personnel of the school or child day program as defined in § 63.1-195 attended by the child so that the local department can receive information from such personnel on an ongoing basis concerning the child's health and behavior, and the activities of the child's custodian; or (iv) a parent, grandparent, or any other person when such parent, grandparent or other person would be considered by the local department as a potential caretaker of the child in the event the department has to remove the child from his custodian.

Whenever a local department of social services exercises its discretion to release otherwise confidential information to any person who meets one or more of these descriptions, the local department shall be presumed to have exercised its discretion in a reasonable and lawful manner.

It shall be unlawful for any officer, agent or employee of any child-welfare agency, for the Commissioner, the State Board or their agents or employees, and for any person who has held any such position, and for any other person to whom any such information is disclosed as hereinabove provided, to disclose, directly or indirectly, any such confidential information, except as herein provided. Every violation of this section shall constitute a *Class 1* misdemeanor and be punishable as such.

B. Any person who has attained his majority, who has not been legally adopted in accordance with the provisions of Chapter 11 (§ 63.1-220 et seq.) of this title, who was not a child for whom all parental rights and responsibilities have been terminated, and who believes that he has been placed out by a child-placing agency, shall have the right to demand and receive from the Commissioner, the State Board, or any such agency, such information as any of them may have concerning his own parents or relatives.

C. Any person who has not been legally adopted in accordance with the provisions of Chapter 11 (§ 63.1-220 et seq.) of this title and who was a child for whom all parental rights and responsibilities have been terminated, shall not have access to any information from a child-placing agency with respect to the identity of the biological family, except (i) upon application of the child who is eighteen or more years of age, (ii) upon order of a family court entered upon good cause shown, and (iii) after notice to and opportunity for hearing by the applicant for such order and the child-placing agency or local board of public welfare or social services which had custody of the child.

An eligible person who is a resident of Virginia may apply for the court order provided for herein to (i) the family court of the county or city where the person resides or (ii) the family court of the county or city where the principal office of the child-placing agency or local board of public welfare or social services which controls the information sought by the person is located. An eligible person who is not a resident of Virginia shall apply for such a court order to the family court of the county or city where the principal office of the child-placing agency or local board of public welfare or social services which controls the information sought by the person is located.

If the identity and whereabouts of the biological family are known to the agency or local board, the court may require the agency or local board to advise the biological parents of the pendency of the application for such order. In determining good cause for the disclosure of such information, the court shall consider the relative effects of such action upon the applicant for such order and the biological parents.

D. This section shall not apply to the disposition of adoption records, reports and information which is governed by the provisions of § 63.1-236.

§ 63.1-248.6. Local departments to establish child-protective services; duties.

A. Each local department shall establish child-protective services under a departmental coordinator within such department or with one or more adjacent local departments which shall be staffed with qualified personnel pursuant to regulations promulgated by the State Board of Social Services. The local department shall be the public agency responsible for receiving and investigating complaints and reports, except that (i) in cases where the reports or complaints are to be made to the juvenile and domestic relations district court, the court shall be responsible for the investigation and (ii) in cases where an employee at a private or state-operated hospital, institution or other facility, or an employee of a school board is suspected of abusing or neglecting a child in such hospital, institution or other facility, or public school, the local department shall request the Department to assist in conducting the investigation in accordance with rules and regulations approved by the State Board.

B. The local department shall ensure, through its own personnel or through cooperative arrangements with other local agencies, that personnel who investigate reports or complaints that an employee of a private or state-operated hospital, institution or other facility, or an employee of a school board, abused or neglected a child in such hospital, institution or other facility, or public school, are qualified and assisted by the Department in accordance with State Board regulations.

C. The local department shall ensure, through its own personnel or through cooperative arrangements with other local agencies, the capability of receiving reports or complaints and responding to them promptly on a twenty-four-hours-a-day, seven-days-per-week basis.

D. The local department shall widely publicize a telephone number for receiving complaints and reports.

E. The local department shall upon receipt of a report or complaint:

1. Make immediate investigation;
2. When investigation of a complaint reveals cause to suspect abuse or neglect, complete a report and transmit it forthwith to the central registry;
3. When abuse or neglect is found, arrange for necessary protective and rehabilitative services to be provided to the child and his family;
4. If removal of the child or his siblings from their home is deemed necessary, petition the court for such removal;

5. Report immediately to the attorney for the Commonwealth and *the local law-enforcement agency* and make available to ~~him~~ *them* the records of the local department ~~upon which such report is based~~, when abuse or neglect is suspected in any case involving (i) death of a child; (ii) injury or threatened injury to the child in which a felony or Class 1 misdemeanor is also suspected; (iii) any sexual abuse, suspected sexual abuse or other sexual offense involving a child, including but not limited to the use or display of the child in sexually explicit visual material, as defined in § 18.2-374.1; (iv) any abduction of a child; (v) any felony or Class 1 misdemeanor drug offense involving a child; or (vi) contributing to the delinquency of a minor in violation of § 18.2-371, and provide the attorneys for the Commonwealth and *the local law-enforcement agency* with records of any ~~prior founded disposition~~ of complaints of abuse or neglect involving the victim *or the alleged perpetrator*. The local department shall not allow reports of the death of the victim from other local agencies to substitute for a direct ~~report~~ *reports* to the attorney for the Commonwealth *and the local law-enforcement agency*;

6. Send a follow-up report based on the investigation to the central registry within fourteen days and at subsequent intervals to be determined by Board regulations;

7. Determine within forty-five days if a report of abuse or neglect is founded or unfounded and transmit a report to such effect to the central registry;

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

9. When abuse or neglect is suspected in any case involving the death of a child, report the case immediately to the regional medical examiner and the local law-enforcement agency.

F. The local department shall foster, when practicable, the creation, maintenance and coordination of hospital and community-based ~~multi-discipline~~ *multi-disciplinary* teams which shall include where possible, but not be limited to, members of the medical, mental health, social work, nursing, education, legal and law-enforcement professions. Such teams shall assist the local departments in identifying abused and neglected children; coordinating medical, social, and legal services for the children and their families; developing innovative programs for detection and prevention of child abuse; promoting community concern and action in the area of child abuse and neglect; and disseminating information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat child abuse and neglect. These teams may be the family assessment and planning teams established pursuant to § 2.1-753. *Multi-disciplinary teams may develop agreements regarding the exchange of information among the parties for the purposes of the investigation and disposition of complaints of child abuse and neglect, delivery of services, and child protection. Any information exchanged in accordance with the agreement shall not be considered to be a violation of the provisions of § 63.1-53 or § 63.1-209.*

The local department shall also coordinate its efforts in the provision of these services for abused and neglected children with the judge and staff of the court.

G. The local department shall report annually on its activities concerning abused and neglected children to the court and to the Child-Protective Services Unit in the Department on forms provided by the Department.

H. Statements, or any evidence derived therefrom, made to local department child-protective services personnel, or to any person performing the duties of such personnel, by any person accused of the abuse, injury, neglect or death of a child after the arrest of such person, shall not be used in evidence in the case in chief against such person in the criminal proceeding on the question of guilt or innocence over the objection of the accused, unless the statement was made after such person was fully advised (i) of his right to remain silent, (ii) that anything he says may be used against him in a court of law, (iii) that he has a right to the presence of an attorney during any interviews, and (iv) that if he cannot afford an attorney, one will be appointed for him prior to any questioning.

I. Notwithstanding any other provision of law, the local department, in accordance with Board regulations, shall transmit information regarding founded complaints and may transmit other information regarding reports, complaints, and investigations involving active duty military personnel or members of their household to family advocacy representatives of the United States Armed Forces.

§ 63.1-248.6. (Delayed effective date) Local departments to establish child-protective services; duties.

A. Each local department shall establish child-protective services under a departmental coordinator within such department or with one or more adjacent local departments which shall be staffed with qualified personnel pursuant to regulations promulgated by the State Board of Social Services. The local department shall be the public agency responsible for receiving and investigating complaints and reports, except that (i) in cases where the reports or complaints are to be made to the family court, the court shall be responsible for the investigation and (ii) in cases where an employee at a private or state-operated hospital, institution or other facility, or an employee of a school board is suspected of abusing or neglecting a child in such hospital, institution or other facility, or public school, the local department shall request the Department to assist in conducting the investigation in accordance with rules and regulations approved by the State Board.

B. The local department shall ensure, through its own personnel or through cooperative arrangements with other local agencies, that personnel who investigate reports or complaints that an employee of a private or state-operated hospital, institution or other facility, or an employee of a school board, abused or neglected a child in such hospital, institution or other facility, or public school, are qualified and assisted by the Department in accordance with State Board regulations.

C. The local department shall ensure, through its own personnel or through cooperative arrangements with other local agencies, the capability of receiving reports or complaints and responding to them promptly on a twenty-four-hours-a-day, seven-days-per-week basis.

D. The local department shall widely publicize a telephone number for receiving complaints and reports.

E. The local department shall upon receipt of a report or complaint:

1. Make immediate investigation;
2. When investigation of a complaint reveals cause to suspect abuse or neglect, complete a report and transmit it forthwith to the central registry;
3. When abuse or neglect is found, arrange for necessary protective and rehabilitative services to be

provided to the child and his family;

4. If removal of the child or his siblings from their home is deemed necessary, petition the court for such removal;

5. Report immediately to the attorney for the Commonwealth and *the local law-enforcement agency* and make available to ~~him~~ *them* the records of the local department ~~upon which such report is based~~; when abuse or neglect is suspected in any case involving (i) death of a child; (ii) injury or threatened injury to the child in which a felony or Class 1 misdemeanor is also suspected; (iii) any sexual abuse, suspected sexual abuse or other sexual offense involving a child, including but not limited to the use or display of the child in sexually explicit visual material, as defined in § 18.2-374.1; (iv) any abduction of a child; (v) any felony or Class 1 misdemeanor drug offense involving a child; or (vi) contributing to the delinquency of a minor in violation of § 18.2-371, and provide the attorneys for the Commonwealth and *the local law-enforcement agency* with records of any ~~prior founded disposition~~ of complaints of abuse or neglect involving the victim *or the alleged perpetrator*. The local department shall not allow reports of the death of the victim from other local agencies to substitute for a direct report to the attorney for the Commonwealth *and the local law-enforcement agency*;

6. Send a follow-up report based on the investigation to the central registry within fourteen days and at subsequent intervals to be determined by Board regulations;

7. Determine within forty-five days if a report of abuse or neglect is founded or unfounded and transmit a report to such effect to the central registry;

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

9. When abuse or neglect is suspected in any case involving the death of a child, report the case immediately to the regional medical examiner and the local law-enforcement agency.

F. The local department shall foster, when practicable, the creation, maintenance and coordination of hospital and community-based ~~multi-discipline~~ *multi-disciplinary* teams which shall include where possible, but not be limited to, members of the medical, mental health, social work, nursing, education, legal and law-enforcement professions. Such teams shall assist the local departments in identifying abused and neglected children; coordinating medical, social, and legal services for the children and their families; developing innovative programs for detection and prevention of child abuse; promoting community concern and action in the area of child abuse and neglect; and disseminating information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat child abuse and neglect. These teams may be the family assessment and planning teams established pursuant to § 2.1-753. *Multi-disciplinary teams may develop agreements regarding the exchange of information among the parties for the purposes of the investigation and disposition of complaints of child abuse and neglect, delivery of services, and child protection. Any information exchanged in accordance with the agreement shall not be considered to be a violation of the provisions of § 63.1-53 or § 63.1-209.*

The local department shall also coordinate its efforts in the provision of these services for abused and neglected children with the judge and staff of the court.

G. The local department shall report annually on its activities concerning abused and neglected children to the court and to the Child-Protective Services Unit in the Department on forms provided by the Department.

H. Statements, or any evidence derived therefrom, made to local department child-protective services personnel, or to any person performing the duties of such personnel, by any person accused of the abuse, injury, neglect or death of a child after the arrest of such person, shall not be used in evidence in the case in chief against such person in the criminal proceeding on the question of guilt or innocence over the objection of the accused, unless the statement was made after such person was fully advised (i) of his right to remain silent, (ii) that anything he says may be used against him in a court of law, (iii) that he has a right to the presence of an attorney during any interviews, and (iv) that if he cannot afford an attorney, one will be appointed for him prior to any questioning.

I. Notwithstanding any other provision of law, the local department, in accordance with Board regulations, shall transmit information regarding founded complaints and may transmit other information regarding reports, complaints, and investigations involving active duty military personnel or members of their household to family advocacy representatives of the United States Armed Forces.

§ 63.1-248.9. Authority to take child into custody.

A. A physician or protective service worker of a local department or law-enforcement official investigating a report or complaint of abuse and neglect may take a child into custody for up to seventy-two hours without prior approval of parents or guardians provided:

1. The circumstances of the child are such that continuing in his place of residence or in the care or custody of the parent, guardian, custodian or other person responsible for the child's care, presents an imminent danger to the child's life or health to the extent that severe or irremediable injury would be likely to result *before a hearing can be held*; and

2. A court order is not immediately obtainable; and

3. The court has set up procedures for placing such children; and
 4. Following taking the child into custody, the parents or guardians are notified as soon as practicable that he is in custody; and
 5. A report is made to the local department; and
 6. The court is notified and the person or agency taking custody of such child obtains, as soon as possible, but in no event later than seventy-two hours, an emergency removal order pursuant to § 16.1-251; however, if a preliminary removal order is issued after a hearing held in accordance with § 16.1-252 within seventy-two hours of the removal of the child, an emergency removal order shall not be necessary.
- B. If the seventy-two-hour period for holding a child in custody and for obtaining a preliminary or emergency removal order expires on a Saturday, Sunday, or other legal holiday, the seventy-two hours shall be extended to the next day that is not a Saturday, Sunday, or other legal holiday, but in no event shall either such period exceed ninety-six hours.