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HOUSE BILL NO. 34

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on February 1, 1996)

(Patron Prior to Substitute—Delegate Puller)

A BILL to amend and reenact § 63.1-248.5:1, of the Code of Virginia, as it is currently effective and as it may become effective, relating to child protective services records.

Be it enacted by the General Assembly of Virginia:

1. That § 63.1-248.5:1 of the Code of Virginia, as it is currently effective and as it may become effective, is amended and reenacted as follows:

§ 63.1-248.5:1. (For effective date — See note) Retention of records in unfounded cases; procedures regarding unfounded reports alleged to be made in bad faith or with malicious intent.

A. The local department shall retain the records of any investigation of a report or complaint which is made pursuant to this chapter and which it determines to be unfounded for thirty days from the date the person who is the subject of the report or complaint is notified of such determination in a record which is separate from the central registry and accessible only to the Department and to local departments for child protective services. The purpose of retaining unfounded complaints is to provide local departments with information regarding prior investigations. In no event shall the mere existence of a prior complaint be used to determine that a subsequent complaint is founded. The subject of the report is the person who is alleged to have committed abuse or neglect. The subject of the report shall have access to his own record. The record of the unfounded case shall be purged three years after the date of the report if there are no subsequent founded or unfounded reports regarding the same child or the person who is the subject of the report in that three years. The department shall retain the records for an additional period of up to two years if requested in writing by the person who is the subject of such complaint or report. The child protective services records regarding the petitioner which result from such report shall be purged immediately by any custodian of such records upon presentation to the custodian of a certified copy of a court order that there has been a civil action which determined that the report was made in bad faith or with malicious intent. After purging the records, the custodian shall notify the petitioner in writing that the records have been purged.

B. At the time the Department notifies a person who is the subject of a complaint or report made pursuant to this chapter that such complaint or report is unfounded, it shall notify him that the record will be retained for three years and of the availability of the procedures set out in this section regarding reports or complaints alleged to be made in bad faith or with malicious intent.

C. Any person who is the subject of an unfounded report or complaint made pursuant to this chapter who believes that such report or complaint was made in bad faith or with malicious intent may petition the circuit court in the jurisdiction in which the report or complaint was made for the release to such person of the records of the investigation. Such petition shall specifically set forth the reasons such person believes that such report or complaint was made in bad faith or with malicious intent. Upon the filing of such petition, the court shall request and the department shall provide to the court its records of the investigation for the court's in camera review. The petitioner shall be entitled to present evidence to support his petition. If the court determines that there is a reasonable question of fact as to whether the report or complaint was made in bad faith or with malicious intent and that disclosure of the identity of the complainant would not be likely to endanger the life or safety of the complainant, it shall provide to the petitioner a copy of the records of the investigation. The original records shall be subject to discovery in any subsequent civil action regarding the making of a complaint or report in bad faith or with malicious intent.

§ 63.1-248.5:1. (Delayed effective date - See notes) Retention of records in unfounded cases; procedures regarding unfounded reports alleged to be made in bad faith or with malicious intent.

A. The local department shall retain the records of any investigation of a report or complaint which is made pursuant to this chapter and which it determines to be unfounded for thirty days from the date the person who is the subject of the report or complaint is notified of such determination in a record which is separate from the central registry and accessible only to the Department and to local departments for child protective services. The purpose of retaining unfounded complaints is to provide local departments with information regarding prior investigations. In no event shall the mere existence of a prior complaint be used to determine that a subsequent complaint is founded. The subject of the report is the person who is alleged to have committed abuse or neglect. The subject of the report shall have access to his own record. The record of the unfounded case shall be purged three years after the date of the report if there are no subsequent founded or unfounded reports regarding the same child or the person who is the subject of the report in that three years. The department shall retain the records

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60 for an additional period of up to two years if requested in writing by the person who is the subject of
61 such complaint or report.

62 B. At the time the Department notifies a person who is the subject of a complaint or report made
63 pursuant to this chapter that such complaint or report is unfounded, it shall notify him *that the record*
64 *will be retained for three years and* of the availability of the procedures set out in this section regarding
65 reports or complaints alleged to be made in bad faith or with malicious intent.

66 C. Any person who is the subject of an unfounded report or complaint made pursuant to this chapter
67 who believes that such report or complaint was made in bad faith or with malicious intent may petition
68 the family court in the jurisdiction in which the report or complaint was made for the release to such
69 person of the records of the investigation. Such petition shall specifically set forth the reasons such
70 person believes that such report or complaint was made in bad faith or with malicious intent. Upon the
71 filing of such petition, the court shall request and the department shall provide to the court its records of
72 the investigation for the court's in camera review. The petitioner shall be entitled to present evidence to
73 support his petition. If the court determines that there is a reasonable question of fact as to whether the
74 report or complaint was made in bad faith or with malicious intent and that disclosure of the identity of
75 the complainant would not be likely to endanger the life or safety of the complainant, it shall provide to
76 the petitioner a copy of the records of the investigation. The original records shall be subject to
77 discovery in any subsequent civil action regarding the making of a complaint or report in bad faith or
78 with malicious intent. *The child protective services records regarding the petitioner which result from*
79 *such report shall be purged immediately by any custodian of such records upon presentation to the*
80 *custodian of a certified copy of a court order that there has been a civil action which determined that*
81 *the report was made in bad faith or with malicious intent. After purging the records, the custodian shall*
82 *notify the petitioner in writing that the records have been purged.*