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SENATE BILL NO. 557

Senate Amendments in [] — February 10, 1998

A *BILL to amend and reenact §§ 63.1-248.2 and 63.1-248.6 of the Code of Virginia, as they are currently effective and as they may become effective, relating to child protective services.*

Patron—Barry

Referred to the Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.1-248.2 and 63.1-248.6 of the Code of Virginia, as they are currently effective and as they may become effective, are amended and reenacted as follows:

§ 63.1-248.2. Definitions.

As used in this chapter unless the context requires a different meaning:

"Abused or neglected child" means any child less than eighteen years of age:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law; or

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis;

6. Who, as a newborn infant, tests positive in his or her bloodstream or urine for a controlled substance not prescribed by a physician, is born dependent on such drugs or demonstrates drug withdrawal symptoms, or has been diagnosed by a physician as having a condition which is attributable to in utero exposure to illegal drugs; or

7. Who, as a newborn infant, has been diagnosed by a physician as having fetal alcohol syndrome which is attributable to in utero exposure to alcohol.

"Complaint" means any information or allegation of abuse or neglect made orally or in writing other than the reports referred to below.

"Department" means the State Department of Social Services.

"Local department" means the department of public welfare or social services of any county or city in this Commonwealth.

"Prevention" means efforts that (i) promote health and competence in people and (ii) create, promote and strengthen environments that nurture people in their development.

"Report" means an official document on which information is given concerning abuse and neglect and which is required to be made by persons designated herein and by local departments in those situations in which investigation of a complaint from the general public reveals suspected abuse or neglect.

"The court" means the juvenile and domestic relations district court of the county or city.

Nothing in this section shall relieve any person specified in § 63.1-248.3 from making reports required in that section, regardless of the identity of the person suspected to have caused such abuse or neglect.

§ 63.1-248.2. (Delayed effective date) Definitions.

As used in this chapter unless the context requires a different meaning:

"Abused or neglected child" means any child less than eighteen years of age:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no child who in good faith is under treatment solely by spiritual

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60 means through prayer in accordance with the tenets and practices of a recognized church or religious
61 denomination shall for that reason alone be considered to be an abused or neglected child;

62 3. Whose parents or other person responsible for his care abandons such child;

63 4. Whose parents or other person responsible for his care commits or allows to be committed any act
64 of sexual exploitation or any sexual act upon a child in violation of the law; or

65 5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or
66 physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco
67 parentis;

68 6. *Who, as a newborn infant, tests positive in his or her bloodstream or urine for a controlled*
69 *substance not prescribed by a physician, is born dependent on such drugs or demonstrates drug*
70 *withdrawal symptoms, or has been diagnosed by a physician as having a condition which is attributable*
71 *to in utero exposure to illegal drugs; or*

72 7. *Who, as a newborn infant, has been diagnosed by a physician as having fetal alcohol syndrome*
73 *which is attributable to in utero exposure to alcohol.*

74 "Complaint" means any information or allegation of abuse or neglect made orally or in writing other
75 than the reports referred to below.

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78 in this Commonwealth.

79 "Prevention" means efforts that (i) promote health and competence in people and (ii) create, promote
80 and strengthen environments that nurture people in their development.

81 "Report" means an official document on which information is given concerning abuse and neglect
82 and which is required to be made by persons designated herein and by local departments in those
83 situations in which investigation of a complaint from the general public reveals suspected abuse or
84 neglect.

85 "The court" means the family court of the county or city.

86 Nothing in this section shall relieve any person specified in § 63.1-248.3 from making reports
87 required in that section, regardless of the identity of the person suspected to have caused such abuse or
88 neglect.

89 § 63.1-248.6. Local departments to establish child-protective services; duties.

90 A. Each local department shall establish child-protective services under a departmental coordinator
91 within such department or with one or more adjacent local departments which shall be staffed with
92 qualified personnel pursuant to regulations promulgated by the State Board of Social Services. The local
93 department shall be the public agency responsible for receiving and investigating complaints and reports,
94 except that (i) in cases where the reports or complaints are to be made to the juvenile and domestic
95 relations district court and the judge determines that no local department of social services within a
96 reasonable geographic distance can impartially investigate the report, the court shall be responsible for
97 the investigation and (ii) in cases where an employee at a private or state-operated hospital, institution or
98 other facility, or an employee of a school board is suspected of abusing or neglecting a child in such
99 hospital, institution or other facility, or public school, the local department shall request the Department
100 to assist in conducting the investigation in accordance with rules and regulations approved by the State
101 Board.

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

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

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

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

113 1. Make immediate investigation;

114 2. When investigation of a complaint reveals cause to suspect abuse or neglect, complete a report and
115 transmit it forthwith to the central registry;

116 3. When abuse or neglect is found, arrange for necessary protective and rehabilitative services to be
117 provided to the child and his family;

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

120 5. Report immediately to the attorney for the Commonwealth and the local law-enforcement agency
121 and make available to them the records of the local department 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 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 direct 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 and to the person who is the subject of the investigation. *Proof that a newborn infant (i) tests positive in his or her bloodstream or urine for a controlled substance not prescribed by a physician, (ii) is born dependent on such drugs and demonstrates drug withdrawal symptoms, (iii) has been diagnosed by a physician as having a condition which is attributable to in utero exposure to illegal drugs, or (iv) has been diagnosed by a physician as having fetal alcohol syndrome which is attributable to in utero exposure to alcohol shall be prima facie proof of child abuse or neglect [, unless there is clear evidence that the mother diligently sought and received appropriate substance abuse counseling prior to the infant's birth] .* However, upon written justification by the local department, such determination may be extended, not to exceed a total of sixty days. If through the exercise of reasonable diligence the department is unable to find the child who is the subject of the report, the time the child cannot be found shall not be computed as part of the forty-five-day or sixty-day period and documentation of such reasonable diligence shall be placed in the record;

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;

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;

10. Use reasonable diligence to locate (i) any child for whom a report of suspected abuse or neglect has been received and is under investigation or for whom a founded determination of abuse and neglect has been made and a child protective services case opened and (ii) persons who are the subject of a report that is under investigation, if the whereabouts of the child or such persons are unknown to the local department;

11. When an abused or neglected child and the persons who are the subject of an open child protective services case have relocated out of the jurisdiction of the local department, notify the child protective services agency in the jurisdiction to which such persons have relocated, whether inside or outside of the Commonwealth, and forward to such agency relevant portions of the case record. The receiving local department shall arrange protective and rehabilitative services as required by this section; and

12. When a child for whom a report of suspected abuse or neglect has been received and is under investigation and the child and/or the child's parents or other persons responsible for the child's care who are the subject of the report that is under investigation have relocated out of the jurisdiction of the local department, notify the child protective services agency in the jurisdiction to which the child and/or such persons have relocated, whether inside or outside of the Commonwealth, and complete such investigation by requesting such agency's assistance in completing the investigation. The local department that completes the investigation shall forward to the receiving agency relevant portions of the case record in order for the receiving agency to arrange protective and rehabilitative services as required by this section.

F. The local department shall foster, when practicable, the creation, maintenance and coordination of hospital and community-based 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

183 agreements regarding the exchange of information among the parties for the purposes of the
184 investigation and disposition of complaints of child abuse and neglect, delivery of services, and child
185 protection. Any information exchanged in accordance with the agreement shall not be considered to be a
186 violation of the provisions of § 63.1-53 or § 63.1-209.

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

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

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

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

204 § 63.1-248.6. (Delayed effective date) Local departments to establish child-protective services; duties.

205 A. Each local department shall establish child-protective services under a departmental coordinator
206 within such department or with one or more adjacent local departments which shall be staffed with
207 qualified personnel pursuant to regulations promulgated by the State Board of Social Services. The local
208 department shall be the public agency responsible for receiving and investigating complaints and reports,
209 except that (i) in cases where the reports or complaints are to be made to the family court and the judge
210 determines that no local department of social services within a reasonable geographic distance can
211 impartially investigate the report, the court shall be responsible for the investigation and (ii) in cases
212 where an employee at a private or state-operated hospital, institution or other facility, or an employee of
213 a school board is suspected of abusing or neglecting a child in such hospital, institution or other facility,
214 or public school, the local department shall request the Department to assist in conducting the
215 investigation in accordance with rules and regulations approved by the State Board.

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

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

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

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228 2. When investigation of a complaint reveals cause to suspect abuse or neglect, complete a report and
229 transmit it forthwith to the central registry;

230 3. When abuse or neglect is found, arrange for necessary protective and rehabilitative services to be
231 provided to the child and his family;

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

234 5. Report immediately to the attorney for the Commonwealth and the local law-enforcement agency
235 and make available to them the records of the local department when abuse or neglect is suspected in
236 any case involving (i) death of a child; (ii) injury or threatened injury to the child in which a felony or
237 Class 1 misdemeanor is also suspected; (iii) any sexual abuse, suspected sexual abuse or other sexual
238 offense involving a child, including but not limited to the use or display of the child in sexually explicit
239 visual material, as defined in § 18.2-374.1; (iv) any abduction of a child; (v) any felony or Class 1
240 misdemeanor drug offense involving a child; or (vi) contributing to the delinquency of a minor in
241 violation of § 18.2-371, and provide the attorneys for the Commonwealth and the local law-enforcement
242 agency with records of any complaints of abuse or neglect involving the victim or the alleged
243 perpetrator. The local department shall not allow reports of the death of the victim from other local
244 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 and to the person who is the subject of the investigation. *Proof that a newborn infant (i) tests positive in his or her bloodstream or urine for a controlled substance not prescribed by a physician, (ii) is born dependent on such drugs and demonstrates drug withdrawal symptoms, (iii) has been diagnosed by a physician as having a condition which is attributable to in utero exposure to illegal drugs, or (iv) has been diagnosed by a physician as having fetal alcohol syndrome which is attributable to in utero exposure to alcohol shall be prima facie proof of child abuse or neglect [, unless there is clear evidence that the mother diligently sought and received appropriate substance abuse counseling prior to the infant's birth]* . However, upon written justification by the local department, such determination may be extended, not to exceed a total of sixty days. If through the exercise of reasonable diligence the department is unable to find the child who is the subject of the report, the time the child cannot be found shall not be computed as part of the forty-five-day or sixty-day period and documentation of such reasonable diligence shall be placed in the record;

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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;

10. Use reasonable diligence to locate (i) any child for whom a report of suspected abuse or neglect has been received and is under investigation or for whom a founded determination of abuse and neglect has been made and a child protective services case opened and (ii) persons who are the subject of a report that is under investigation, if the whereabouts of the child or such persons are unknown to the local department;

11. When an abused or neglected child and the persons who are the subject of an open child protective services case have relocated out of the jurisdiction of the local department, notify the child protective services agency in the jurisdiction to which such persons have relocated, whether inside or outside of the Commonwealth, and forward to such agency relevant portions of the case record. The receiving local department shall arrange protective and rehabilitative services as required by this section; and

12. When a child for whom a report of suspected abuse or neglect has been received and is under investigation and the child and/or the child's parents or other persons responsible for the child's care who are the subject of the report that is under investigation have relocated out of the jurisdiction of the local department, notify the child protective services agency in the jurisdiction to which the child and/or such persons have relocated, whether inside or outside of the Commonwealth, and complete such investigation by requesting such agency's assistance in completing the investigation. The local department that completes the investigation shall forward to the receiving agency relevant portions of the case record in order for the receiving agency to arrange protective and rehabilitative services as required by this section.

F. The local department shall foster, when practicable, the creation, maintenance and coordination of hospital and community-based 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.

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307 personnel, or to any person performing the duties of such personnel, by any person accused of the
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309 the case in chief against such person in the criminal proceeding on the question of guilt or innocence
310 over the objection of the accused, unless the statement was made after such person was fully advised (i)
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