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## SENATE BILL NO. 557

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions  
on March 5, 1998)

(Patron Prior to Substitute—Senator Barry)

A *BILL to amend and reenact §§ 63.1-248.3 and 63.1-248.6 of the Code of Virginia, as they are currently effective and as they may become effective, and to amend the Code of Virginia by adding a section numbered 16.1-241.3, relating to child protective services.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 63.1-248.3 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, and that the Code of Virginia is amended by adding a section numbered 16.1-241.3 as follows:**

*§ 16.1-241.3. Newborn children; substance abuse.*

*Upon the filing of a petition, within ten 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 A1 of § 63.1-248.3, 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 12.1 (§ 63.1- 248.1 et seq.) of Title 63.1 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 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 12.1 (§ 63.1- 248.1 et seq.) of Title 63.1, but shall be a final order subject to appeal.*

*§ 63.1-248.3. Physicians, nurses, teachers, etc., to report certain injuries to children; 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, 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 of Social Services' 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 duly accredited Christian Science practitioner,
8. Any mental health professional,
9. Any law-enforcement officer,
10. Any mediator eligible to receive court referrals pursuant to § 8.01-576.8,
11. 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, and
12. Any person associated with or employed by any private organization responsible for the care, custody or control of children.

If neither the locality in which the child resides or where the abuse or neglect is believed to have occurred is known, then such report shall be made to the local department of the county or city where the abuse or neglect was discovered or to the Department of Social Services' toll-free child abuse and neglect hotline.

If an employee of the local department is suspected of abusing or neglecting a child, the report shall be made to the juvenile and domestic relations district court of the county or city where the abuse or neglect was discovered. Upon receipt of such a report by the court, the judge of the juvenile and domestic relations district court shall assign the report to a local department of social services that is not the employer of the suspected employee for investigation; or, if the judge believes that no local department of social services within a reasonable geographic distance can be impartial in investigating

60 the reported case, the judge shall assign the report to the court service unit of his court for investigation.  
61 The judge may consult with the State Department of Social Services in selecting a local department to  
62 conduct the investigation.

63 If the information is received by a teacher, staff member, resident, intern or nurse in the course of  
64 professional services in a hospital, school or similar institution, such person may, in place of said report,  
65 immediately notify the person in charge of the institution or department, or his designee, who shall  
66 make such report forthwith.

67 The initial report may be an oral report but such report shall be reduced to writing by the child  
68 abuse coordinator of the local department on a form prescribed by the State Board of Social Services.  
69 The person required to make the report shall disclose all information which is the basis for his suspicion  
70 of abuse or neglect of the child and, upon request, shall make available to the child-protective services  
71 coordinator and the local department investigating the reported case of child abuse or neglect any  
72 records or reports which document the basis for the report.

73 *A1. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall*  
74 *include (i) a finding made by an attending physician within seven days of a child's birth that the results*  
75 *of a blood or urine test conducted within twenty-four hours of the birth of the child indicate the*  
76 *presence of a controlled substance not prescribed for the mother by a physician, (ii) a finding by an*  
77 *attending physician made within twenty-four hours of a child's birth that the child was born dependent*  
78 *on a controlled substance which was not prescribed by a physician for the mother and has demonstrated*  
79 *withdrawal symptoms, (iii) a diagnosis by an attending physician made within seven days of a child's*  
80 *birth that the child has an illness, disease or condition which, to a reasonable degree of medical*  
81 *certainty, is attributable to in utero exposure to a controlled substance which was not prescribed by a*  
82 *physician for the mother or the child or (iv) a diagnosis by an attending physician made within seven*  
83 *days of a child's birth that the child has fetal alcohol syndrome attributable to in utero exposure to*  
84 *alcohol. When "reason to suspect" is based upon a factor specified in this subsection, the report shall*  
85 *specifically include reference to the factor or factors relied upon.*

86 B. Any person required to file a report pursuant to ~~subsection A~~ of this section who fails to do so  
87 within seventy-two hours of his first suspicion of child abuse or neglect shall be fined not more than  
88 \$500 for the first failure and for any subsequent failures not less than \$100 nor more than \$1,000.

89 § 63.1-248.3. (Delayed effective date) Physicians, nurses, teachers, etc., to report certain injuries to  
90 children; penalty for failure to report.

91 A. The following persons who, in their professional or official capacity, have reason to suspect that a  
92 child is an abused or neglected child, shall report the matter immediately, except as hereinafter provided,  
93 to the local department of the county or city wherein the child resides or wherein the abuse or neglect is  
94 believed to have occurred or to the Department of Social Services' toll-free child abuse and neglect  
95 hotline:

- 96 1. Any person licensed to practice medicine or any of the healing arts,
- 97 2. Any hospital resident or intern, and any person employed in the nursing profession,
- 98 3. Any person employed as a social worker,
- 99 4. Any probation officer,
- 100 5. Any teacher or other person employed in a public or private school, kindergarten or nursery
- 101 school,
- 102 6. Any person providing full-time or part-time child care for pay on a regularly planned basis,
- 103 7. Any duly accredited Christian Science practitioner,
- 104 8. Any mental health professional,
- 105 9. Any law-enforcement officer,
- 106 10. Any mediator eligible to receive court referrals pursuant to § 8.01-576.8,
- 107 11. Any professional staff person, not previously enumerated, employed by a private or state-operated
- 108 hospital, institution or facility to which children have been committed or where children have been
- 109 placed for care and treatment, and
- 110 12. Any person associated with or employed by any private organization responsible for the care,
- 111 custody or control of children.

112 If neither the locality in which the child resides or where the abuse or neglect is believed to have  
113 occurred is known, then such report shall be made to the local department of the county or city where  
114 the abuse or neglect was discovered or to the Department of Social Services' toll-free child abuse and  
115 neglect hotline.

116 If an employee of the local department is suspected of abusing or neglecting a child, the report shall  
117 be made to the family court of the county or city where the abuse or neglect was discovered. Upon  
118 receipt of such a report by the court, the judge of the family court shall assign the report to a local  
119 department of social services that is not the employer of the suspected employee for investigation; or, if  
120 the judge believes that no local department of social services in a reasonable geographic distance can be  
121 impartial in investigating the reported case, the judge shall assign the report to the court service unit of

his court for investigation. The judge may consult with the State Department of Social Services in selecting a local department to conduct the investigation.

If the information is received by a teacher, staff member, resident, intern or nurse in the course of professional services in a hospital, school or similar institution, such person may, in place of said report, immediately notify the person in charge of the institution or department, or his designee, who shall make such report forthwith.

The initial report may be an oral report but such report shall be reduced to writing by the child abuse coordinator of the local department on a form prescribed by the State Board of Social Services. The person required to make the report shall disclose all information which is the basis for his suspicion of abuse or neglect of the child and, upon request, shall make available to the child-protective services coordinator and the local department investigating the reported case of child abuse or neglect any records or reports which document the basis for the report.

*A1. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall include (i) a finding made by an attending physician within seven days of a child's birth that the results of a blood or urine test conducted within twenty-four hours of the birth of the child indicate the presence of a controlled substance not prescribed for the mother by a physician, (ii) a finding by an attending physician made within twenty-four hours of a child's birth that the child was born dependent on a controlled substance which was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms, (iii) a diagnosis by an attending physician made within seven days of a child's birth that the child has an illness, disease or condition which, to a reasonable degree of medical certainty, is attributable to in utero exposure to a controlled substance which was not prescribed by a physician for the mother or the child or (iv) a diagnosis by an attending physician made within seven days of a child's birth that the child has fetal alcohol syndrome attributable to in utero exposure to alcohol. When "reason to suspect" is based upon a factor specified in this subsection, the report shall specifically include reference to the factor or factors relied upon.*

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

§ 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 and the judge determines that no local department of social services within a reasonable geographic distance can impartially investigate the report, 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 *and, if the report or complaint was based upon one of the factors specified in subsection A1 of § 63.1-248.3, the department may file a petition pursuant to § 16.1-241.3;*

2. When investigation of a complaint reveals cause to suspect abuse or neglect, complete a report and transmit it forthwith to the central registry, *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 subsection A1 of § 63.1-248.3, if the mother sought substance abuse counseling or treatment prior to the child's birth;*

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

183 such removal;

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

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

198 7. Determine within forty-five days if a report of abuse or neglect is founded or unfounded and  
199 transmit a report to such effect to the central registry and to the person who is the subject of the  
200 investigation. However, upon written justification by the local department, such determination may be  
201 extended, not to exceed a total of sixty days. If through the exercise of reasonable diligence the  
202 department is unable to find the child who is the subject of the report, the time the child cannot be  
203 found shall not be computed as part of the forty-five-day or sixty-day period and documentation of such  
204 reasonable diligence shall be placed in the record;

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

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

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

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

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

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

244 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 and the judge determines that no local department of social services within a reasonable geographic distance can impartially investigate the report, 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 *and, if the report or complaint was based upon one of the factors specified in subsection A1 of § 63.1-248.3, the department may file a petition pursuant to § 16.1-241.3;*

2. When investigation of a complaint reveals cause to suspect abuse or neglect, complete a report and transmit it forthwith to the central registry, *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 subsection A1 of § 63.1-248.3, if the mother sought substance abuse counseling or treatment prior to the child's birth;*

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 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 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. 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 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

368 regulations, shall transmit information regarding founded complaints and may transmit other information  
369 regarding reports, complaints, and investigations involving active duty military personnel or members of  
370 their household to family advocacy representatives of the United States Armed Forces.