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HOUSE BILL NO. 2128

Offered January 20, 1999

A BILL to amend and reenact § 32.1-283.1 of the Code of Virginia, relating to the State Child Fatality Review Program.

Patron—Dillard

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:**1. That § 32.1-283.1 of the Code of Virginia is amended and reenacted as follows:**

§ 32.1-283.1. State Child Fatality Review Team established; membership; local teams authorized; access to and maintenance of records; confidentiality; etc.

A. There is hereby created the State Child Fatality Review Team, hereinafter referred to as the "Team," which shall develop and implement procedures to ensure that child deaths occurring in Virginia are analyzed in a systematic way. The Team shall review (i) violent and unnatural child deaths, (ii) sudden child deaths occurring within the first eighteen months of life, and (iii) those fatalities for which the cause or manner of death was not determined with reasonable medical certainty. No child death review shall be initiated by the Team until conclusion of any law-enforcement investigation or criminal prosecution. The Team shall (i) develop and revise as necessary operating procedures for the review of child deaths, including identification of cases to be reviewed and procedures for coordination among the agencies and professionals involved, (ii) improve the identification, data collection, and record keeping of the causes of child death, (iii) recommend components for prevention and education programs, (iv) recommend training to improve the investigation of child deaths, and (v) provide technical assistance, upon request, to any local child fatality teams that may be established. The operating procedures for the review of child deaths shall be exempt from the Administrative Process Act (§ 9-6.14:1 et seq.) pursuant to subdivision 17 of subsection B of § 9-6.14:4.1.

B. The sixteen-member *State Child Fatality Review Team* shall be chaired by the Chief Medical Examiner and shall be composed of the following persons or their designees: the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services; the Director of Child Protective Services within the Department of Social Services; the Superintendent of Public Instruction; the State Registrar of Vital Records; and the Director of the Department of Criminal Justice Services. In addition, one representative from each of the following entities shall be appointed by the Governor to serve for a term of three years: local law-enforcement agencies, local fire departments, local departments of social services, the Medical Society of Virginia, the Virginia College of Emergency Physicians, the Virginia Pediatric Society, Virginia Sudden Infant Death Syndrome Alliance, local emergency medical services personnel, Commonwealth's attorneys, and community services boards.

C. *Local child fatality review teams may be established to perform local child death reviews in accordance with the criteria set forth in subsection A of this section for the State Team. Local teams shall be composed of the following nine persons or their designees: the local medical examiner, the local social services official or employee in charge of child protective services, the director of the relevant local or district health department, the person in charge of law-enforcement for the jurisdiction, the executive of the local department of social services, the local fire marshal, the attorney for the Commonwealth in the locality, the chief judge of the juvenile and domestic relations court, and the executive director of the local community services board or other local mental health agency, and such additional persons as may be appointed to serve by the chairperson of the local team. The chairman shall be elected from among the designated membership. The chairman may appoint no more than ten additional members to represent public human services agencies, local public education agencies, and public safety agencies, and shall appoint representatives of local pediatricians, emergency medical services agencies and personnel, psychiatrists, and psychologists.*

D. Upon the request of the Chief Medical Examiner in his capacity as chair of the *State Child Fatality Review Team or the chairperson of the relevant local child fatality review team*, made after the conclusion of any law-enforcement investigation or prosecution, information and records regarding a child whose death is being reviewed by the *State Team or the relevant local team* may be inspected and copied by the Chief Medical Examiner or his designee *or the chairperson of the local team or his designee*, including, but not limited to, any report of the circumstances of the event maintained by any state or local law-enforcement agency or medical examiner, and information or records maintained on such child by any school, social services agency or court. Information, records or reports maintained by any Commonwealth's Attorney shall be made available for inspection and copying by the Chief Medical

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60 Examiner *or the chairperson of the relevant local team* pursuant to procedures which shall be developed
61 by the Chief Medical Examiner and the Commonwealth's Attorneys' Services Council established by
62 § 2.1-64.28:1. In addition, the Chief Medical Examiner *or the chairperson of the relevant local team*
63 may inspect and copy from any Virginia health care provider, on behalf of the *State Team or the*
64 *relevant local team*, (i) without obtaining consent, the health and mental health records of the child and
65 those perinatal medical records of the child's mother that related to such child, and (ii) upon obtaining
66 consent from each adult regarding his personal records, or from a parent regarding the records of a
67 minor child, the health and mental health records of the child's family. All such information and records
68 shall be confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.1-340 et
69 seq.) pursuant to subdivision 59 of subsection B of § 2.1-342.

70 Upon the conclusion of the child death review, all information and records concerning the child and
71 the child's family shall be shredded or otherwise destroyed by the Chief Medical Examiner *or the*
72 *chairperson of the relevant local team* in order to ensure confidentiality. Such information or records
73 shall not be subject to subpoena or discovery or be admissible in any criminal or civil proceeding. If
74 available from other sources, however, such information and records shall not be immune from
75 subpoena, discovery or introduction into evidence when obtained through such other sources solely
76 because the information and records were presented to the *State Team or the relevant local team* during
77 a child death review. Further, the findings of the *State Team or any local team* may be disclosed or
78 published in statistical or other form which shall not identify individuals. The portions of meetings in
79 which individual child death cases are discussed by the *State Team or any local team* shall be closed
80 pursuant to subdivision 23 of subsection A of § 2.1-344. In addition to the requirements of § 2.1-344.1,
81 all team members, persons attending closed team meetings, and persons presenting information and
82 records on specific child deaths to the *State Team or any local team* during closed meetings shall
83 execute a sworn statement to honor the confidentiality of the information, records, discussions, and
84 opinions disclosed during any closed meeting to review a specific child death. Violations of this
85 subsection shall be punishable as a Class 3 misdemeanor.

86 DE. Upon notification of a child death, any state or local government agency maintaining records on
87 such child or such child's family which are periodically purged shall retain such records for the longer
88 of twelve months or until such time as the State Child Fatality Review Team ~~has~~ *and the relevant local*
89 *team, if any, have completed its* their child death review of the specific case.

90 EF. The *State Team* shall compile annual data which shall be made available to the Governor and
91 the General Assembly as requested. *Local teams may compile annual data to be included, if relevant, in*
92 *the State Team's report.* These statistical data compilations shall not contain any personally identifying
93 information and shall be public records.