

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 9-173.8 and 63.1-248.3 of the Code of Virginia, relating to reporting certain injuries to children.

[H 2394]

Approved

Be it enacted by the General Assembly of Virginia:**1. That §§ 9-173.8 and 63.1-248.3 of the Code of Virginia are amended and reenacted as follows:**

§ 9-173.8. Volunteer court-appointed special advocates; powers and duties; assignment; qualifications; training.

A. Services in each local court-appointed special advocate program shall be provided by volunteer court-appointed special advocates, hereinafter referred to as advocates. The advocate's duties shall include:

1. Investigation of the case to which he is assigned to provide independent factual information to the court.

2. Submission to the court of a written report of such investigation in compliance with the provisions of § 16.1-274. Such report may, upon request of the court, include recommendations as to the child's welfare.

3. Monitoring the case to which he is assigned to ensure compliance with the court's orders.

4. Assisting a guardian ad litem appointed, if one has been appointed, to represent the child in providing effective representation of the child's needs and best interests.

5. *Reporting a suspected abused or neglected child pursuant to § 63.1-248.3.*

The advocate is not a party to the case to which he is assigned and shall not call witnesses or examine witnesses. The advocate shall not, with respect to the case to which he is assigned, provide legal counsel or advice to any person, appear as counsel in court or in proceedings which are part of the judicial process, or engage in the unauthorized practice of law. The advocate may testify if called as a witness.

B. The program director shall assign an advocate to a child when requested to do so by the judge of the juvenile and domestic relations district court having jurisdiction over the proceedings. The advocate shall continue his association with each case to which he is assigned until relieved of his duties by the court or by the program director.

C. The Department shall promulgate regulations governing the qualifications of advocates who for purposes of administering this subsection shall be deemed to be criminal justice employees. Such regulations shall require that an advocate be at least twenty-one years of age and that the program director shall obtain with the approval of the court (i) a copy of his criminal history record or certification that no conviction data are maintained on him and (ii) a copy of information from the central registry maintained pursuant to § 63.1-248.8 on any investigation of child abuse or neglect undertaken on him or certification that no such record is maintained on him. Advocates selected prior to the promulgation of regulations governing qualifications shall meet the minimum requirements as set forth in this article and in regulation.

D. An advocate shall have no associations which create a conflict of interests or the appearance of such a conflict with his duties as an advocate. No advocate shall be assigned to a case of a child whose family has a professional or personal relationship with the advocate. Questions concerning conflicts of interests shall be determined in accordance with regulations promulgated by the Department.

E. No applicant shall be assigned as an advocate until successful completion of a program of training required by regulations. The Department shall set standards for both basic and ongoing training.

§ 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,

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HB2394ER

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, *and*

13. *Any person who is designated a court-appointed special advocate pursuant to Article 1.4 of Chapter 27 (§ 9-173.6 et seq.) of Title 9.*

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 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 forty-eight 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 forty-eight 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 this subsection, such fact shall be included in the report along with the facts relied upon by the person making the report.

B. Any person required to file a report pursuant to 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.