

005686400

## SENATE BILL NO. 259

Senate Amendments in [ ] — February 1, 2000

A *BILL to amend and reenact §§ 63.1-248.2, 63.1-248.3, 63.1-248.4 and 63.1-248.6 of the Code of Virginia, relating to child protective services.*

\_\_\_\_\_  
Patron—Barry

\_\_\_\_\_  
Referred to Committee on Rehabilitation and Social Services

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

**1. That §§ 63.1-248.2, 63.1-248.3, 63.1-248.4 and 63.1-248.6 of the Code of Virginia 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.

"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.

"Other person responsible for his care" shall not include [ ~~employees of principals, assistant principals, supervisors or teachers employed by~~ ] local school boards [ *in the course of their regular or assigned educational employment activities* ].

"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.

§ 63.1-248.3. 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

ENGROSSED

SB259E

60 school,

61 6. Any person providing full-time or part-time child care for pay on a regularly planned basis,

62 7. Any duly accredited Christian Science practitioner,

63 8. Any mental health professional,

64 9. Any law-enforcement officer,

65 10. Any mediator eligible to receive court referrals pursuant to § 8.01-576.8,

66 11. Any professional staff person, not previously enumerated, employed by a private or state-operated  
67 hospital, institution or facility to which children have been committed or where children have been  
68 placed for care and treatment,

69 12. Any person associated with or employed by any private organization responsible for the care,  
70 custody or control of children, and

71 13. Any person who is designated a court-appointed special advocate pursuant to Article 1.4  
72 (§ 9-173.6 et seq.) of Chapter 27 of Title 9.

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

77 If an employee of the local department is suspected of abusing or neglecting a child, the report shall  
78 be made to the juvenile and domestic relations district court of the county or city where the abuse or  
79 neglect was discovered. Upon receipt of such a report by the court, the judge of the juvenile and  
80 domestic relations district court shall assign the report to a local department of social services that is not  
81 the employer of the suspected employee for investigation; or, if the judge believes that no local  
82 department of social services within a reasonable geographic distance can be impartial in investigating  
83 the reported case, the judge shall assign the report to the court service unit of his court for investigation.  
84 The judge may consult with the State Department of Social Services in selecting a local department to  
85 conduct the investigation.

86 *If [ ~~an employee of a principal, assistant principal, supervisor, or teacher employed by~~ ] a local*  
87 *school board is suspected of abusing or neglecting a child in the course of his [ regular or assigned ]*  
88 *educational employment activities, the complaint shall be made to the division superintendent as a*  
89 *representative of the school board and to the attorney for the Commonwealth. [ If the complaint results*  
90 *in a conviction, the division superintendent and the attorney for the Commonwealth shall report the*  
91 *matter to the central registry pursuant to §63.1-248.8. ]*

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

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

102 A1. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall  
103 include (i) a finding made by an attending physician within seven days of a child's birth that the results  
104 of a blood or urine test conducted within forty-eight hours of the birth of the child indicate the presence  
105 of a controlled substance not prescribed for the mother by a physician, (ii) a finding by an attending  
106 physician made within forty-eight hours of a child's birth that the child was born dependent on a  
107 controlled substance which was not prescribed by a physician for the mother and has demonstrated  
108 withdrawal symptoms, (iii) a diagnosis by an attending physician made within seven days of a child's  
109 birth that the child has an illness, disease or condition which, to a reasonable degree of medical  
110 certainty, is attributable to in utero exposure to a controlled substance which was not prescribed by a  
111 physician for the mother or the child, or (iv) a diagnosis by an attending physician made within seven  
112 days of a child's birth that the child has fetal alcohol syndrome attributable to in utero exposure to  
113 alcohol. When "reason to suspect" is based upon this subsection, such fact shall be included in the  
114 report along with the facts relied upon by the person making the report.

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

118 § 63.1-248.4. Complaints by others of certain injuries to children.

119 Any person who suspects that a child is an abused or neglected child may make a complaint  
120 concerning such child, except as hereinafter provided, to the local department of the county or city  
121 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. If an employee of the local department is suspected of abusing or neglecting a child, the complaint 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 in 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 [ ~~an~~ employee of a principal, assistant principal, supervisor, or teacher employed by ] a local school board is suspected of abusing or neglecting a child in the course of his [ regular or assigned ] educational employment activities, the complaint shall be made to the division superintendent as a representative of the school board and to the attorney for the Commonwealth. [ If the complaint results in a conviction, the division superintendent and the attorney for the Commonwealth shall report the matter to the central registry pursuant to §63.1-248.8. ]* Such a complaint may be oral or in writing and shall disclose all information which is the basis for the suspicion of abuse or neglect of the child.

§ 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 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 direct reports to the attorney for the Commonwealth and the local

183 law-enforcement agency;

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

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

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

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

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

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

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

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

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

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

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

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

ENGROSSED

SB259E