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HOUSE BILL NO. 1207

Offered January 10, 2018

Prefiled January 10, 2018

A BILL to amend and reenact §§ 63.2-104, 63.2-105, 63.2-1526, and 63.2-1729 of the Code of Virginia, relating to the Department of Social Services; investigative and enforcement proceedings; information provided to individuals or business entities who are the subject of a complaint involving abuse or neglect.

Patron—Heretick

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-104, 63.2-105, 63.2-1526, and 63.2-1729 of the Code of Virginia are amended and reenacted as follows:

§ 63.2-104. Confidential records and information concerning social services; penalty.

A. The records, information and statistical registries of the Department, local departments and of all child-welfare agencies concerning social services to or on behalf of individuals shall be confidential information, provided that the Commissioner, the Board and their agents shall have access to such records, information and statistical registries, and that such records, information and statistical registries may be disclosed to any person having a legitimate interest in accordance with state and federal law and regulation. *Notwithstanding any other provision of law to the contrary, an individual or business entity who is the subject of an investigation or administrative action by the Department or a local department shall be considered a person having a legitimate interest in the records of the Department or local department.*

It shall be unlawful for any officer, agent or employee of any child-welfare agency; for the Commissioner, the State Board or their agents or employees; for any person who has held any such position; and for any other person to whom any such record or information is disclosed to disclose, directly or indirectly, any such confidential record or information, except as herein provided or pursuant to § 63.2-105. Every violation of this section shall constitute a Class 1 misdemeanor.

B. If a request for a record or information concerning applicants for and recipients of social services is made to the Department or a local department by a person who does not have a legitimate interest, the Commissioner or local director shall not provide the record or information unless permitted by state or federal law or regulation.

C. This section shall not apply to the disposition of adoption records, reports and information that is governed by the provisions of § 63.2-1246.

§ 63.2-105. Confidential records and information concerning social services; child-protective services and child-placing agencies.

A. The local department may disclose the contents of records and information learned during the course of a child-protective services investigation or during the provision of child-protective services to a family, without a court order and without the consent of the family, to a person having a legitimate interest when in the judgment of the local department such disclosure is in the best interest of the child who is the subject of the records. Persons having a legitimate interest in child-protective services records of local departments include; ~~but are not limited to,~~ (i) any person who is responsible for investigating a report of known or suspected abuse or neglect or for providing services to a child or family that is the subject of a report, including multidisciplinary teams and family assessment and planning teams referenced in subsections J and K of § 63.2-1503, law-enforcement agencies and attorneys for the Commonwealth; (ii) child welfare or human services agencies of the Commonwealth or its political subdivisions when those agencies request information to determine the compliance of any person with a child-protective services plan or an order of any court; (iii) personnel of the school or child day program as defined in § 63.2-100 attended by the child so that the local department can receive information from such personnel on an ongoing basis concerning the child's health and behavior, and the activities of the child's custodian; (iv) *an individual or business entity who is the subject of an investigation or administrative action by a local department with regard to child-protective services records of such local department,* (v) a parent, grandparent, or any other person when such parent, grandparent or other person would be considered by the local department as a potential caretaker of the child in the event the local department has to remove the child from his custodian; and ~~(v)~~ (vi) the Commitment Review Committee and the Office of the Attorney General for the purposes of sexually violent predator civil commitments pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

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59 Whenever a local department exercises its discretion to release otherwise confidential information to
60 any person who meets one or more of these descriptions, the local department shall be presumed to have
61 exercised its discretion in a reasonable and lawful manner.

62 B. Any person who has not been legally adopted in accordance with the provisions of this title and
63 who was a child for whom all parental rights and responsibilities have been terminated, shall not have
64 access to any information from a child-placing agency with respect to the identity of the biological
65 family, except (i) upon application of the child who is 18 or more years of age, (ii) upon order of a
66 circuit court entered upon good cause shown, and (iii) after notice to and opportunity for hearing by the
67 applicant for such order and the child-placing agency or local board that had custody of the child.

68 An eligible person who is a resident of Virginia may apply for the court order provided for herein to
69 (a) the circuit court of the county or city where the person resides or (b) the circuit court of the county
70 or city where the principal office of the child-placing agency or local board that controls the information
71 sought by the person is located. An eligible person who is not a resident of Virginia shall apply for such
72 a court order to the circuit court of the county or city where the principal office of the child-placing
73 agency or local board that controls the information sought by the person is located.

74 If the identity and whereabouts of the biological family are known to the agency or local board, the
75 court may require the agency or local board to advise the biological parents of the pendency of the
76 application for such order. In determining good cause for the disclosure of such information, the court
77 shall consider the relative effects of such action upon the applicant for such order and upon the
78 biological parents.

79 **§ 63.2-1526. Appeals of certain actions of local departments.**

80 A. A person who is suspected of or is found to have committed abuse or neglect may, within ~~thirty~~
81 30 days of being notified of that determination, request the local department rendering such
82 determination to amend the determination and the local department's related records. Upon written
83 request, the local department shall provide the appellant all information used in making its
84 determination. ~~Disclosure of, including unredacted copies of notes and reports relating to the~~
85 ~~investigation and the names of the reporter and collateral witnesses. The local department may withhold~~
86 ~~from disclosure (i) the reporter's name or information which may endanger the well-being of a child~~
87 ~~shall not be released. The, (ii) the identity of a collateral witness or, (iii) the identity of any other person~~
88 ~~providing information, or (iv) any other information connected to the investigation shall not be released~~
89 ~~if disclosure may endanger his life or safety only if the local department has made a specific~~
90 ~~determination that the disclosure of the name, identity, or information would endanger the well-being of~~
91 ~~a child or the life or safety of the reporter, a collateral witness, or any other person providing~~
92 ~~information. Information prohibited from being disclosed by state or federal law or regulation shall not~~
93 ~~be released. The local department's decision to withhold the name, identity, or other information~~
94 ~~pursuant to this section may be appealed to the circuit court. The venue shall be as specified in~~
95 ~~subdivision 1 of § 8.01-261. The local department shall have the burden of proving by clear and~~
96 ~~convincing evidence that the disclosure of the name, identity, or other information would endanger the~~
97 ~~well-being of a child or the life or safety of the reporter, a collateral witness, or any other person~~
98 ~~providing information. The court may conduct in camera review as appropriate.~~

99 The local department shall hold an informal conference or consultation where ~~such~~ the person
100 suspected of or found to have committed abuse or neglect, who may be represented by counsel, shall be
101 entitled to informally present testimony of witnesses, documents, factual data, arguments or other
102 submissions of proof to the local department. With the exception of the local director, no person whose
103 regular duties include substantial involvement with child abuse and neglect cases shall preside over the
104 informal conference. If the local department refuses the request for amendment or fails to act within
105 ~~forty-five~~ 45 days after receiving such request, the person may, within ~~thirty~~ 30 days thereafter, petition
106 the Commissioner, who shall grant a hearing to determine whether it appears, by a preponderance of the
107 evidence, that the determination or record contains information which is irrelevant or inaccurate
108 regarding the commission of abuse or neglect by the person who is the subject of the determination or
109 record and therefore shall be amended. A person who is the subject of a report who requests an
110 amendment to the record, as provided above, has the right to obtain an extension for an additional
111 specified period of up to ~~sixty~~ 60 days by requesting in writing that the ~~forty-five~~ 45 days in which the
112 local department must act be extended. The extension period, which may be up to ~~sixty~~ 60 days, shall
113 begin at the end of the ~~forty-five~~ 45 days in which the local department must act. When there is an
114 extension period, the ~~thirty-day~~ 30-day period to request an administrative hearing shall begin on the
115 termination of the extension period.

116 B. The Commissioner shall designate and authorize one or more members of his staff to conduct
117 such hearings. The decision of any staff member so designated and authorized shall have the same force
118 and effect as if the Commissioner had made the decision. The hearing officer shall have the authority to
119 issue subpoenas for the production of documents and the appearance of witnesses. The hearing officer is
120 authorized to determine the number of depositions that will be allowed and to administer oaths or

affirmations to all parties and witnesses who plan to testify at the hearing. The Board shall adopt regulations necessary for the conduct of such hearings. Such regulations shall include provisions stating that the person who is the subject of the report has the right (i) to submit oral or written testimony or documents in support of himself ~~and~~; (ii) *to receive a copy of all information the Board intends to rely upon, in whole or in part, at the hearing*; and (iii) to be informed of the procedure by which information will be made available or withheld from him. In case of any information withheld, such person shall be advised of the general nature of such information and the reasons, for reasons of privacy or otherwise, that it is being withheld. Upon giving reasonable notice, either party at his own expense may depose a nonparty and submit such deposition at the hearing pursuant to Board regulation. Upon good cause shown, after a party's written motion, the hearing officer may issue subpoenas for the production of documents or to compel the attendance of witnesses at the hearing, except that alleged child victims of the person and their siblings shall not be subpoenaed, deposed or required to testify. The person who is the subject of the report may be represented by counsel at the hearing. Upon petition, the court shall have the power to enforce any subpoena that is not complied with or to review any refusal to issue a subpoena. Such decisions may not be further appealed except as part of a final decision that is subject to judicial review. Such hearing officers are empowered to order the amendment of such determination or records as is required to make them accurate and consistent with the requirements of this chapter or the regulations adopted hereunder. If, after hearing the facts of the case, the hearing officer determines that the person who is the subject of the report has presented information that was not available to the local department at the time of the local conference and which if available may have resulted in a different determination by the local department, he may remand the case to the local department for reconsideration. The local department shall have fourteen days in which to reconsider the case. If, at the expiration of ~~fourteen~~ 14 days, the local department fails to act or fails to amend the record to the satisfaction of the appellant, the case shall be returned to the hearing officer for a determination. If aggrieved by the decision of the hearing officer, such person may obtain further review of the decision in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq.).

C. Whenever an appeal of the local department's finding is made and a criminal charge is also filed against the appellant for the same conduct involving the same victim as investigated by the local department, the appeal process shall automatically be stayed until the criminal prosecution in circuit court is completed. During such stay, the appellant's right of access to the records of the local department regarding the matter being appealed shall also be stayed. Once the criminal prosecution in circuit court has been completed, the local department shall advise the appellant in writing of his right to resume his appeal within the time frames provided by law and regulation.

§ 63.2-1729. Confidentiality of complainant's identity.

Whenever the Department conducts inspections and investigations in response to complaints received from the public, the identity of the complainant and the identity of any resident, participant or child who is the subject of the complaint, or identified therein, shall be confidential and shall not be open to inspection by members of the public. Identities of the complainant and resident, participant or child who is the subject of the complaint shall be revealed only if a court order so requires. Nothing contained herein shall prevent the Department, in its discretion, from disclosing to the assisted living facility, adult day care center or child welfare agency the nature of the complaint or the identity of the resident, participant or child who is the subject of the complaint. Nothing contained herein shall prevent the Department or its employees from making reports under Chapter 15 (§ 63.2-1500 et seq.) ~~of this title~~ or Article 2 (§ 63.2-1603 et seq.) of Chapter 16 ~~of this title~~. *If Notwithstanding any other provision of law to the contrary, if the Department intends to rely, in whole or in part, on any statements made by the complainant, at any administrative hearing brought against the assisted living facility, adult day care center or child welfare agency, the Department shall disclose the identity of the complainant to the assisted living facility, adult day care center or child welfare agency a reasonable time in advance of such hearing.*