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SENATE BILL NO. 1436

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on January 25, 2019)

(Patron Prior to Substitute—Senator McClellan)

A BILL to amend and reenact § 63.2-1509 of the Code of Virginia, relating to mandatory reporters of child abuse or neglect; prenatal substance exposure.

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-1509 of the Code of Virginia is amended and reenacted as follows:

§ 63.2-1509. Requirement that certain injuries to children be reported by physicians, nurses, teachers, etc.; 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 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's 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 or family-services specialist;
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 mental health professional;
8. Any law-enforcement officer or animal control officer;
9. Any mediator eligible to receive court referrals pursuant to § 8.01-576.8;
10. 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;
11. Any person 18 years of age or older associated with or employed by any public or private organization responsible for the care, custody or control of children;
12. Any person who is designated a court-appointed special advocate pursuant to Article 5 (§ 9.1-151 et seq.) of Chapter 1 of Title 9.1;
13. Any person 18 years of age or older who has received training approved by the Department of Social Services for the purposes of recognizing and reporting child abuse and neglect;
14. Any person employed by a local department as defined in § 63.2-100 who determines eligibility for public assistance;
15. Any emergency medical services provider certified by the Board of Health pursuant to § 32.1-111.5, unless such provider immediately reports the matter directly to the attending physician at the hospital to which the child is transported, who shall make such report forthwith;
16. Any athletic coach, director or other person 18 years of age or older employed by or volunteering with a private sports organization or team;
17. Administrators or employees 18 years of age or older of public or private day camps, youth centers and youth recreation programs; and
18. Any person employed by a public or private institution of higher education other than an attorney who is employed by a public or private institution of higher education as it relates to information gained in the course of providing legal representation to a client.

This subsection shall not apply to any regular minister, priest, rabbi, imam, or duly accredited practitioner of any religious organization or denomination usually referred to as a church as it relates to (i) information required by the doctrine of the religious organization or denomination to be kept in a confidential manner or (ii) information that would be subject to § 8.01-400 or 19.2-271.3 if offered as evidence in court.

If neither the locality in which the child resides nor 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's 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 court of the county or city where the abuse or neglect was discovered. Upon receipt of such a report by the court, the judge shall assign the report to a local department that is not the employer of the suspected employee for investigation or family assessment. The judge may consult with the Department in selecting a local department to respond to the report or the complaint.

60 If the information is received by a teacher, staff member, resident, intern or nurse in the course of
61 professional services in a hospital, school or similar institution, such person may, in place of said report,
62 immediately notify the person in charge of the institution or department, or his designee, who shall
63 make such report forthwith. If the initial report of suspected abuse or neglect is made to the person in
64 charge of the institution or department, or his designee, pursuant to this subsection, such person shall
65 notify the teacher, staff member, resident, intern or nurse who made the initial report when the report of
66 suspected child abuse or neglect is made to the local department or to the Department's toll-free child
67 abuse and neglect hotline, and of the name of the individual receiving the report, and shall forward any
68 communication resulting from the report, including any information about any actions taken regarding
69 the report, to the person who made the initial report.

70 The initial report may be an oral report but such report shall be reduced to writing by the child
71 abuse coordinator of the local department on a form prescribed by the Board. Any person required to
72 make the report pursuant to this subsection shall disclose all information that is the basis for his
73 suspicion of abuse or neglect of the child and, upon request, shall make available to the child-protective
74 services coordinator and the local department, which is the agency of jurisdiction, any information,
75 records, or reports that document the basis for the report. All persons required by this subsection to
76 report suspected abuse or neglect who maintain a record of a child who is the subject of such a report
77 shall cooperate with the investigating agency and shall make related information, records and reports
78 available to the investigating agency unless such disclosure violates the federal Family Educational
79 Rights and Privacy Act (20 U.S.C. § 1232g). Provision of such information, records, and reports by a
80 health care provider shall not be prohibited by § 8.01-399. Criminal investigative reports received from
81 law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be
82 subject to public disclosure.

83 B. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall, *due to*
84 *the special medical needs of infants affected by substance exposure*, include (i) a finding made by a
85 health care provider within six weeks of the birth of a child that the child was born affected by
86 substance abuse or experiencing withdrawal symptoms resulting from in utero drug exposure; (ii) a
87 diagnosis made by a health care provider within four years following a child's birth that the child has an
88 illness, disease, or condition that, to a reasonable degree of medical certainty, is attributable to maternal
89 abuse of a controlled substance during pregnancy; or (iii) a diagnosis made by a health care provider
90 within four years following a child's birth that the child has a fetal alcohol spectrum disorder attributable
91 to in utero exposure to alcohol. When "reason to suspect" is based upon this subsection, such fact shall
92 be included in the report along with the facts relied upon by the person making the report. *Such reports*
93 *shall not constitute a per se finding of child abuse or neglect. If a health care provider in a licensed*
94 *hospital makes any finding or diagnosis set forth in clause (i), (ii), or (iii), the hospital shall require the*
95 *development of a written discharge plan under protocols established by the hospital pursuant to*
96 *subdivision B 6 of § 32.1-127.*

97 C. Any person who makes a report or provides records or information pursuant to subsection A or
98 who testifies in any judicial proceeding arising from such report, records, or information shall be
99 immune from any civil or criminal liability or administrative penalty or sanction on account of such
100 report, records, information, or testimony, unless such person acted in bad faith or with malicious
101 purpose.

102 D. Any person required to file a report pursuant to this section who fails to do so as soon as
103 possible, but not longer than 24 hours after having reason to suspect a reportable offense of child abuse
104 or neglect, shall be fined not more than \$500 for the first failure and for any subsequent failures not less
105 than \$1,000. In cases evidencing acts of rape, sodomy, or object sexual penetration as defined in Article
106 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, a person who knowingly and intentionally fails to make
107 the report required pursuant to this section shall be guilty of a Class 1 misdemeanor.

108 E. No person shall be required to make a report pursuant to this section if the person has actual
109 knowledge that the same matter has already been reported to the local department or the Department's
110 toll-free child abuse and neglect hotline.