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HOUSE BILL NO. 751

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact §§ 63.2-1509 and 63.2-1606 of the Code of Virginia, relating to mandated reports of suspected abuse.

 Patron—Bell

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1509 and 63.2-1606 of the Code of Virginia are 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 child day program, as that term is defined in § 22.1-289.02;
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 public or 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;
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; ~~and~~
19. Any minister, priest, rabbi, imam, or duly accredited practitioner of any religious organization or denomination usually referred to as a church, unless the information supporting the suspicion of child abuse or neglect (i) is required by the doctrine of the religious organization or denomination to be kept in a confidential manner or (ii) would be subject to § 8.01-400 or 19.2-271.3 if offered as evidence in court; *and*
20. *Any practitioner of behavior analysis.*

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

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59 be made to the court of the county or city where the abuse or neglect was discovered. Upon receipt of
60 such a report by the court, the judge shall assign the report to a local department that is not the
61 employer of the suspected employee for investigation or family assessment. The judge may consult with
62 the Department in selecting a local department to respond to the report or the complaint.

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

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

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

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

105 D. Any person required to file a report pursuant to this section who fails to do so as soon as
106 possible, but not longer than 24 hours after having reason to suspect a reportable offense of child abuse
107 or neglect, shall be fined not more than \$500 for the first failure and for any subsequent failures not less
108 than \$1,000. In cases evidencing acts of rape, sodomy, or object sexual penetration as defined in Article
109 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, a person who knowingly and intentionally fails to make
110 the report required pursuant to this section shall be guilty of a Class 1 misdemeanor.

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

114 § 63.2-1606. Protection of aged or incapacitated adults; mandated and voluntary reporting.

115 A. Matters giving reason to suspect the abuse, neglect or exploitation of adults shall be reported
116 immediately upon the reporting person's determination that there is such reason to suspect. Medical
117 facilities inspectors of the Department of Health are exempt from reporting suspected abuse immediately
118 while conducting federal inspection surveys in accordance with § 1864 of Title XVIII and Title XIX of
119 the Social Security Act, as amended, of certified nursing facilities as defined in § 32.1-123. Reports shall
120 be made to the local department or the adult protective services hotline in accordance with requirements

of this section by the following persons acting in their professional capacity:

1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503, with the exception of persons licensed by the Board of Veterinary Medicine;

2. Any mental health services provider as defined in § 54.1-2400.1;

3. Any emergency medical services provider certified by the Board of Health pursuant to § 32.1-111.5, unless such provider immediately reports the suspected abuse, neglect or exploitation directly to the attending physician at the hospital to which the adult is transported, who shall make such report forthwith;

4. Any guardian or conservator of an adult;

5. Any person employed by or contracted with a public or private agency or facility and working with adults in an administrative, supportive or direct care capacity;

6. Any person providing full, intermittent or occasional care to an adult for compensation, including, but not limited to, companion, chore, homemaker, and personal care workers; and

7. Any law-enforcement officer; and

8. Any practitioner of behavior analysis.

B. The report shall be made in accordance with subsection A to the local department of the county or city wherein the adult resides or wherein the adult abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline. Nothing in this section shall be construed to eliminate or supersede any other obligation to report as required by law. If a person required to report under this section receives information regarding abuse, neglect or exploitation while providing professional services in a hospital, nursing facility or similar institution, then he may, in lieu of reporting, notify the person in charge of the institution or his designee, who shall report such information, in accordance with the institution's policies and procedures for reporting such matters, immediately upon his determination that there is reason to suspect abuse, neglect or exploitation. Any person required to make the report or notification required by this subsection shall do so either orally or in writing and shall disclose all information that is the basis for the suspicion of adult abuse, neglect or exploitation. Upon request, any person required to make the report shall make available to the adult protective services worker and the local department investigating the reported case of adult abuse, neglect or exploitation any information, records or reports which document the basis for the report. All persons required to report suspected adult abuse, neglect or exploitation shall cooperate with the investigating adult protective services worker of a local department and shall make information, records and reports which are relevant to the investigation available to such worker to the extent permitted by state and federal law. Criminal investigative reports received from law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be subject to public disclosure; such reports may, however, be disclosed to the Adult Fatality Review Team as provided in § 32.1-283.5 or to a local or regional adult fatality review team as provided in § 32.1-283.6 and, if reviewed by the Team or a local or regional adult fatality review team, shall be subject to applicable confidentiality requirements of the Team or a local or regional adult fatality review team.

C. Any financial institution staff who suspects that an adult has been exploited financially may report such suspected financial exploitation and provide supporting information and records to the local department of the county or city wherein the adult resides or wherein the exploitation is believed to have occurred or to the adult protective services hotline.

D. Any person other than those specified in subsection A who suspects that an adult is an abused, neglected or exploited adult may report the matter to the local department of the county or city wherein the adult resides or wherein the abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline.

E. Any person who makes a report or provides records or information pursuant to subsection A, C, or D, or who testifies in any judicial proceeding arising from such report, records or information, or who takes or causes to be taken with the adult's or the adult's legal representative's informed consent photographs, video recordings, or appropriate medical imaging of the adult who is subject of a report shall be immune from any civil or criminal liability on account of such report, records, information, photographs, video recordings, appropriate medical imaging or testimony, unless such person acted in bad faith or with a malicious purpose.

F. An employer of a mandated reporter shall not prohibit a mandated reporter from reporting directly to the local department or to the adult protective services hotline. Employers whose employees are mandated reporters shall notify employees upon hiring of the requirement to report.

G. Any person 14 years of age or older who makes or causes to be made a report of adult abuse, neglect, or exploitation that he knows to be false is guilty of a Class 4 misdemeanor. Any subsequent conviction of this provision is a Class 2 misdemeanor.

H. Any person who fails to make a required report or notification pursuant to subsection A shall be subject to a civil penalty of not more than \$500 for the first failure and not less than \$100 nor more

182 than \$1,000 for any subsequent failures. Civil penalties under subdivision A 7 shall be determined by a
183 court of competent jurisdiction, in its discretion. All other civil penalties under this section shall be
184 determined by the Commissioner for Aging and Rehabilitative Services or his designee. The
185 Commissioner for Aging and Rehabilitative Services shall establish by regulation a process for imposing
186 and collecting civil penalties, and a process for appeal of the imposition of such penalty pursuant to
187 § 2.2-4026 of the Administrative Process Act.

188 I. Any mandated reporter who has reasonable cause to suspect that an adult died as a result of abuse
189 or neglect shall immediately report such suspicion to the appropriate medical examiner and to the
190 appropriate law-enforcement agency, notwithstanding the existence of a death certificate signed by a
191 licensed physician. The medical examiner and the law-enforcement agency shall receive the report and
192 determine if an investigation is warranted. The medical examiner may order an autopsy. If an autopsy is
193 conducted, the medical examiner shall report the findings to law enforcement, as appropriate, and to the
194 local department or to the adult protective services hotline.

195 J. No person or entity shall be obligated to report any matter if the person or entity has actual
196 knowledge that the same matter has already been reported to the local department or to the adult
197 protective services hotline.

198 K. All law-enforcement departments and other state and local departments, agencies, authorities and
199 institutions shall cooperate with each adult protective services worker of a local department in the
200 detection, investigation and prevention of adult abuse, neglect and exploitation.

201 L. Financial institution staff may refuse to execute a transaction, may delay a transaction, or may
202 refuse to disburse funds if the financial institution staff (i) believes in good faith that the transaction or
203 disbursement may involve, facilitate, result in, or contribute to the financial exploitation of an adult or
204 (ii) makes, or has actual knowledge that another person has made, a report to the local department or
205 adult protective services hotline stating a good faith belief that the transaction or disbursement may
206 involve, facilitate, result in, or contribute to the financial exploitation of an adult. The financial
207 institution staff may continue to refuse to execute a transaction, delay a transaction, or refuse to disburse
208 funds for a period no longer than 30 business days after the date upon which such transaction or
209 disbursement was initially requested based on a good faith belief that the transaction or disbursement
210 may involve, facilitate, result in, or contribute to the financial exploitation of an adult, unless otherwise
211 ordered by a court of competent jurisdiction. Upon refusing to execute a transaction, delaying a
212 transaction, or refusing to disburse funds, the financial institution shall report such refusal or delay
213 within five business days to the local department or the adult protective services hotline. Upon request,
214 and to the extent permitted by state and federal law, financial institution staff making a report to the
215 local department of social services may report any information or records relevant to the report or
216 investigation. Absent gross negligence or willful misconduct, the financial institution and its staff shall
217 be immune from civil or criminal liability for refusing to execute a transaction, delaying a transaction,
218 or refusing to disburse funds pursuant to this subsection. The authority of a financial institution staff to
219 refuse to execute a transaction, to delay a transaction, or to refuse to disburse funds pursuant to this
220 subsection shall not be contingent upon whether financial institution staff has reported suspected
221 financial exploitation of the adult pursuant to subsection C.