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SENATE BILL NO. 316

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact §§ 63.2-104 and 63.2-105 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 66-10.3, relating to juvenile records; identification of children receiving coordinated services.

Patron—Marsden

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-104 and 63.2-105 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 66-10.3 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.

A person having a legitimate interest in child-protective services records and records involving a child receiving foster care services as defined in § 16.1-228 includes the staff of (i) a court services unit, (ii) the Department of Juvenile Justice, (iii) a local community services board, or (iv) the Department of Behavioral Health and Developmental Services who are providing treatment, services, or care for a child who is the subject of such records for a purpose relevant to the provision of the treatment, services, or care when the local agencies have entered into a formal agreement with the Department of Juvenile Justice to provide coordinated services to such children. Such formal agreements may allow the local agencies and the Department of Juvenile Justice to immediately identify children who may be receiving or who have received treatment, services, or care from the local agencies and the Department of Juvenile Justice. Any court services unit or local community services board to which such records are disclosed in accordance with this paragraph shall not further disclose any information received unless such further disclosure is expressly required by law.

The model memorandum of understanding developed in accordance with § 66-10.3 may serve as the formal agreement that is required pursuant to this subsection, but any formal agreement that is entered into by the local agencies and the Department of Juvenile Justice shall be reviewed by the chief judge of the circuit court, or his designee, where such local agencies are located before such agreement may take effect.

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

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59 referenced in subsections J and K of § 63.2-1503, law-enforcement agencies and attorneys for the
60 Commonwealth; (ii) child welfare or human services agencies of the Commonwealth or its political
61 subdivisions when those agencies request information to determine the compliance of any person with a
62 child-protective services plan or an order of any court; (iii) personnel of the school or child day program
63 as defined in § 63.2-100 attended by the child so that the local department can receive information from
64 such personnel on an ongoing basis concerning the child's health and behavior, and the activities of the
65 child's custodian; (iv) a parent, grandparent, or any other person when such parent, grandparent or other
66 person would be considered by the local department as a potential caretaker of the child in the event the
67 local department has to remove the child from his custodian; ~~and~~ (v) the Commitment Review
68 Committee and the Office of the Attorney General for the purposes of sexually violent predator civil
69 commitments pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2; and (vi) *the staff of (a) a court*
70 *services unit, (b) the Department of Juvenile Justice, (c) a local community services board, or (d) the*
71 *Department of Behavioral Health and Developmental Services who are providing treatment, services, or*
72 *care for a child who is the subject of such records for a purpose relevant to the provision of the*
73 *treatment, services, or care, including the immediate identification of children who may be receiving or*
74 *who have received treatment, services, or care from the local agencies and the Department of Juvenile*
75 *Justice, when the local agencies have entered into a formal agreement with the Department of Juvenile*
76 *Justice to provide coordinated services to such children, provided that any court services unit or local*
77 *community services board to which such records are disclosed in accordance with this paragraph shall*
78 *not further disclose any information received unless such further disclosure is expressly required by law.*

79 *The model memorandum of understanding developed in accordance with § 66-10.3 may serve as the*
80 *formal agreement that is required pursuant to this subsection, but any formal agreement that is entered*
81 *into by the local agencies and the Department of Juvenile Justice shall be reviewed by the chief judge*
82 *of the circuit court, or his designee, where such local agencies are located before such agreement may*
83 *take effect.*

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

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

93 An eligible person who is a resident of Virginia may apply for the court order provided for herein to
94 (a) the circuit court of the county or city where the person resides or (b) the circuit court of the county
95 or city where the principal office of the child-placing agency or local board that controls the information
96 sought by the person is located. An eligible person who is not a resident of Virginia shall apply for such
97 a court order to the circuit court of the county or city where the principal office of the child-placing
98 agency or local board that controls the information sought by the person is located.

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

104 **§ 66-10.3. Guidelines and policies and procedures for sharing information derived from juvenile**
105 **records.**

106 A. *The Department shall develop and biennially update a model memorandum of understanding*
107 *setting forth the respective roles and responsibilities of the Department, the Department of Behavioral*
108 *Health and Developmental Services, the Department of Social Services, the court service units, the local*
109 *departments of social services, and the community services boards or behavioral health authorities*
110 *regarding the sharing of information derived from juvenile records for purposes of identifying and*
111 *serving juveniles who may be receiving or who have received treatment, services, or care from the local*
112 *agencies, the Department, or the Department of Behavioral Health and Developmental Services.*

113 B. *In developing and updating the model memorandum of understanding, the Department shall*
114 *consult with the Department of Behavioral Health and Developmental Services, the Department of*
115 *Criminal Justice Services, the Department of Social Services, the Office of Children's Services, and*
116 *representatives selected by the Department from the court service units, local departments of social*
117 *services, community services boards or behavioral health authorities, youth and family organizations,*
118 *and such other stakeholders as the Department shall deem appropriate from across the Commonwealth.*

119 C. *The model memorandum of understanding shall contain provisions regarding the manner in which*
120 *a juvenile who may be receiving or who has received treatment, services, or care from such agency or*

121 department is identified by the agency or department and how such identification is shared among the
122 agencies and departments, including the point at which a juvenile is identified by the agencies or
123 departments that are providing or have provided treatment, services, or care to such juvenile; the
124 manner in which past agency or department involvement is identified and shared, including when
125 informed consent from a juvenile or guardian is appropriate and necessary; and the person at each
126 agency or department responsible for identifying any potential juvenile and serving as a contact for
127 information-sharing requests.

128 D. The Department shall distribute the model memorandum of understanding to each court services
129 unit, community services board or behavioral health authority, and local department of social services.