

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

**THE CHILD PROTECTIVE
SERVICES SYSTEM IN
THE COMMONWEALTH
(HJR 502, 1995)**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 74

**COMMONWEALTH OF VIRGINIA
RICHMOND
1996**

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Del. Phillip Hamilton
Del. Kenneth R. Melvin
Del. Linda T. Puller
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**RICHMOND, VIRGINIA
JANUARY 1996**

EXECUTIVE SUMMARY

The subcommittee conducted an extensive study of the child protective services system in Virginia and determined that many of the problems identified are also faced by other states. A major recommendation of the subcommittee was the establishment of pilot multiple response sites in the Commonwealth. The subcommittee introduced legislation which requires the State Department of Social Services to establish a three-year pilot multiple response system for responding to reports of child abuse or neglect in three to five areas of the state. Rather than requiring a full-scale investigation of every report, the system allows reports to be evaluated by local departments of social services and less serious reports to prompt family assessments. In a family assessment, the emphasis will be on offering services rather than on making an abuse or neglect determination and entering the alleged perpetrator's name in the central registry. Cases that are not appropriate for a family assessment will be investigated using the current procedure. The legislation passed the 1996 General Assembly, and \$89,000 was appropriated for the establishment and operation of the pilot sites. In addition, the subcommittee will be continued for three years to monitor the implementation of the multiple response system. A comprehensive discussion of multiple response systems appears in "Subcommittee Activities" (p. 4). The subcommittee made numerous other recommendations and introduced other legislation, which are discussed later in this report.

I. AUTHORITY

House Joint Resolution No. 502, agreed to by the 1995 General Assembly, established a joint subcommittee to study, evaluate and make recommendations concerning the child protective services system in the Commonwealth (Appendix A). The resolution requires the joint subcommittee to review the following issues:

1. The adequacy of investigatory training received by child protective services caseworkers.
2. The categories of complaint dispositions, particularly the "reason to suspect" category.
3. Access to and the use of the central registry.
4. The child protective services appeals process.
5. Proper procedures for editing investigative reports given to appellants.
6. The rights of appellants to present supporting witnesses and documents.
7. The implementation of recommendations of the State Department of Social Services' November 1994 study of the child protective services appeals process.

House Joint Resolution No. 481, patroned by Delegate Steve Newman, expanded the subcommittee's purview by asking the subcommittee to examine the use of allegations of child abuse to obtain custody of a child and whether sanctions should be imposed for the use of false allegations of abuse (Appendix B).

II. BACKGROUND

House Bill No. 465 As introduced and carried over 1994 General Assembly Session

During the 1994 General Assembly Session, Delegate Alan Mayer introduced House Bill 465 (Appendix C). As introduced the bill allowed appellants to give juvenile and domestic relations district courts the power to issue documents and witness subpoenas for state level child protective services administrative appeal hearings. In Virginia, local departments of social services are required to investigate reports of alleged child abuse/neglect and determine whether the report is unfounded or founded. The State Department of Social Services maintains a central registry containing the names of persons whose child abuse or neglect cases were determined to be founded. A person who is found to have committed child abuse or neglect may appeal the finding of the local department, first to the local department and then to a hearing officer employed by the State Department of Social Services. If still aggrieved, the person may appeal to the circuit court, whose role is limited to a review of the record.

Delegate Mayer introduced House Bill 465 after being contacted by an attorney who alleged that his client, who was the subject of a founded case of child abuse, did not have an adequate opportunity to present evidence in his behalf during an administrative appeal of the founded disposition. The attorney alleged that his client had medical and other evidence to rebut the finding that his client had been the abuser but that the local department of social services would not allow its presentation. Because of confidentiality restrictions, the local department was not able to explain its actions. The bill passed the House of Delegates but was carried over from the 1994 to the 1995 General Assembly Session in the Senate Committee on Rehabilitation and Social Services. At the request of Delegate Mayer, the State Department of Social Services conducted a study of the existing child protective services appeal process. A summary of the study and updates on the study recommendations is contained in Appendix D.

House Bill No. 465
As passed by the 1995 General Assembly Session

During the 1995 General Assembly Session, HB 465 was further amended, passed by both houses and signed by the Governor. (Appendix E). Effective July 1, 1995, the bill revised provisions regarding appeals by a person who has been found to have committed or is suspected of committing abuse or neglect a child. Under the new provisions, the local department of social services must provide an appellant all information used in making its determination, with the exception of the reporter's name, information which may endanger the well-being of a child, and the identity of collateral witnesses or other persons if disclosure might endanger their lives or safety. The bill states that the appellant may be represented by counsel at the local conference and is entitled to present witness testimony, documents and other evidence. Moreover, with the exception of the director of the local department of social services, no person whose regular duties include substantial involvement with child abuse and neglect cases may preside over the local conference.

Provisions regarding the second level of an appeal, which is the hearing before a State Department of Social Services' hearing officer, were also modified. The bill grants the hearing officer the authority to issue subpoenas for the production of documents and the appearance of witnesses. Depositions of nonparties are allowed, and the hearing officer is authorized to determine the number of depositions that will be allowed. Alleged child victims of the person and their siblings may not be subpoenaed, deposed or required to testify. The bill requires the State Board of Social Services, in its regulations, to grant the appellant the right to submit oral or written documents in support of himself and to be informed of the procedure by which information will be made available to or withheld from him. The juvenile and domestic relations district court is given the authority to enforce subpoenas

that are not complied with and to review the hearing officer's refusal to issue a subpoena. The decision of the juvenile and domestic relations district court regarding the subpoena may not be further appealed except as part of a final decision that is subject to judicial review.

III. SUBCOMMITTEE ACTIVITIES

The subcommittee held 11 meetings, among them an organizational meeting in Richmond in May; meetings and public hearings in Fairfax, Norfolk, Richmond, and Roanoke, where numerous citizens testified; meetings around the state with child protective services workers and juvenile and domestic relations district court judges; and, in the fall and winter of 1995, meetings with the House Committee on Health, Welfare and Institutions' Special Subcommittee Studying the Death of Valerie Smelser. Delegate David G. Brickley, chairman of the aforementioned committee, formed the special subcommittee following the death of 12-year-old Valerie Smelser in Frederick County, Virginia, to determine how the child protective services system could be modified to prevent similar tragedies from occurring. The subcommittee also held a joint meeting with the State Board of Social Services, which established a subcommittee to review the child protective services system.

Public Hearings and Input from Other Parties

Overall Concerns

Some individuals were highly critical of the current CPS system, stating that CPS has too much power and sometimes abuses it. Other speakers said that CPS does an excellent job of fulfilling its very difficult mission with inadequate resources and burdensome case loads. Others endorsed the current system but suggested improvements.

Training

Increased and mandatory training for CPS workers was advocated by a large number of speakers, along with strengthening efforts to retain trained workers. Training and support of CPS workers were advocated because the high turnover of workers makes rehabilitative services difficult. Increasing training in identifying false sexual abuse was advocated, along with increasing training for guardians ad litem, establishing certain job qualifications and licensure for CPS workers, eliminating disparities in qualifications between urban and rural CPS workers, increasing resources for foster parents and educating the public about CPS.

Investigations

Some speakers complained that CPS makes its determination without conducting thorough investigations and does not interview enough collateral people (babysitters, teachers, etc.). CPS was urged to conduct more complete investigations and to interview witnesses other than the parents.

A few speakers disagreed with the provision that allows CPS workers to interview children outside the parents' presence. However, another speaker requested that the subcommittee consider amending § 63.1-248.10 to establish procedures for use when the local department of social services is denied access to interview a child.

Parents and grandparents testified that CPS had mishandled their cases by being too intrusive in some instances, yet not protecting their children in other instances. They reported that CPS workers have an attitude problem, are biased in their investigations and are too quick to assume that a person is guilty of child abuse or neglect.

Inconsistency between different jurisdictions was mentioned as a problem, and one speaker advocated the use of polygraph tests for those involved in CPS cases.

Concerns Regarding False Allegations of Abuse

A number of speakers said that CPS does not investigate thoroughly in abuse or neglect cases where the parents are otherwise involved in divorce or custody actions. Some asserted that because both CPS and the judiciary are quick to assume that the allegations are false and the result of an acrimonious relationship between the parties, children are not being protected. Hence, reports of abuse or neglect in custody cases should not be summarily dismissed.

Other speakers indicated that when allegations of child abuse/neglect are fictitious, the person who made the allegations should be subject to serious sanctions. Some said that the subcommittee should persuade bar associations to discourage attorneys from advising parents to make fictitious child abuse allegations to gain custody.

Rights of the Accused

Other persons stated that the biases of individual social workers adversely influenced their cases. Judicial decisions are based on inadequate information are often illogical, and are not in the best interests of children and families. While some speakers remarked that the juvenile court rubber stamps the decisions of CPS, others claimed that valid CPS testimony was completely ignored. Concern was expressed about a lack of accountability for the actions of CPS workers. One speaker noted that because there is an exception to licensure for social workers and

psychologists who practice in a public setting, unqualified persons occupy these positions and are not accountable for their actions.

Critics perceived a number of additional problems. For example, even if a case is unfounded, the allegation of abuse is harmful to the alleged perpetrator. According to some, CPS has too much power, which it routinely abuses; the laws governing CPS are unconstitutional, lacking due process protections; CPS spends too much time investigating cases where no abuse occurred, thereby neglecting children who really are abused; and CPS retains founded cases on its central registry much longer than necessary. As remedies, speakers proposed taking steps to reduce the number of intentionally false allegations; prohibiting CPS from having ex parte communication with the court and from having contact with the accused without the permission of the accused's attorney; and entering only serious cases of child abuse and neglect on the registry.

Finally, a teacher's assistant whose founded case was overturned at the local conference stated that, in her case, CPS violated its own policies and procedures and suggested that the appeal process be completely overhauled.

The subcommittee was urged to remember that CPS is by nature intrusive and to evaluate each recommendation in terms of its effect on children.

Standard of Evidence

Many speakers advocated lowering the standard of evidence for founded cases of abuse and neglect from "clear and convincing" to "a preponderance". With the elimination of the "reason to suspect" category, Virginia now has a protective services system that requires a complaint of abuse and neglect to be categorized as either founded or unfounded. For a worker conducting an investigation to conclude that a complaint is founded, he must do so by clear and convincing evidence; but a judge in court need only find that abuse or neglect has occurred by a preponderance of the evidence in order to remove the child from the home or to take other similarly dramatic action. It was pointed out that Virginia is either the only state or one of two states that have such a high standard and that there are many instances in which the clear and convincing standard will not protect a child at risk. Preponderance is also consistent with the standard of evidence used in civil child abuse cases.

Preserving and Strengthening the Family

Some felt CPS workers do not adequately consider or investigate the suitability of other family members for custody when a child is taken from his parents. CPS does not expend enough effort to keep siblings together when children are removed from their homes and should look more closely at extended families instead of foster care when children are removed. Others stated that family members should be

allowed information about the child and his health and well-being, and that the family should not be excluded from the child's life. However, a former foster parent testified that local departments who maintain a goal of reuniting the family when it is obvious that reunification is not realistic cause children emotional damage by leaving them in limbo.

Several persons who benefited from protective services as children proclaimed the value of those services, but indicated that there were numerous interventions before they were removed from the abusive home. Consumers of home-based treatment supplemented by parent education classes attested to their effectiveness in increasing parenting skills. It was suggested that law enforcement should perform CPS investigations and social workers should promote family support.

A CPS supervisor asserted that the punitive nature of Virginia's child abuse and neglect laws serves as a barrier to CPS achieving its goals and fulfilling its legal mandate to see that services are provided when abuse/neglect exists. Although CPS tells families that it wishes to work with them and not against them, logging their name into the central registry makes families reluctant to trust CPS. In the majority of cases, CPS's ability to help families depends on the family's amenability to that help.

Juvenile and Domestic Relations Court District Judges

The subcommittee received a suggestion from a Fairfax juvenile and domestic relation district court judge that if a juvenile or circuit court judge determines that a child is not abused or neglected, the judge's finding should dispose of any administrative appeal being conducted simultaneously by CPS. This suggestion was discussed by other juvenile judges who noted that the administrative appeal, juvenile court hearing and criminal prosecution serve different purposes and that the disposition of one should not necessarily affect the other.

The judges also suggested that the Court-Appointed Special Advocate (CASA) program should be expanded because it benefits individuals and increases community awareness. Although recent increases in CASA funding were helpful, many programs continue to struggle.

Courts need to retain their current flexibility to make rehabilitative rather than adversarial findings. Foster parent recruitment and training need to be increased, and foster parents need training on including the natural parent in the child's life. There is a lack of resources to allow parent/child contact when a child is removed from his home. Other states have established supervised visitation centers with night and week-end hours.

The judges also discussed the issue of child abuse and neglect allegations during custody disputes. They agreed that these allegations can be difficult to contend with, and that each case must be examined individually. Although persons making false allegations can be charged with perjury, they rarely are. The idea of requiring a custody or visitation order to state whether abuse or neglect was found was discussed, but judges were reluctant to include it when the purpose of the case was not to determine abuse or neglect.

Multiple Response System

The subcommittee learned that several other states, including Florida, Missouri, South Dakota, and West Virginia, have adopted a child protective services multiple response system which uses different levels of intervention for cases of child maltreatment. The purpose of using varied levels of service and intervention is to improve the workload management in CPS; capitalize on and maximize the use of community resources; and focus CPS efforts on the families with the greatest risk and safety issues. In other states, as in Virginia, the child protective services system is overwhelmed by an increasing number of cases and stymied by inadequate resources.

“Multiple response” means that CPS responds to the report of child abuse/neglect according to the characteristics of the individual case rather than with a full scale investigation, as is now required for all reports. The report is carefully evaluated at intake and the local department responds accordingly. For families who need services but whose behavior does not meet the statutory definition of abuse or neglect, the report would be remanded to the local department, which would refer parents to the appropriate community resources. In low-risk cases the local department would offer a family assessment, with services and support for families, and an individualized plan of services most likely to prevent abuse and neglect. The most serious cases would be investigated as required under current law. Services would be provided and parents would be accountable.

The multiple response system recognizes the need for different approaches to reports of child abuse and neglect and stops the practice of requiring a uniform response to all reports. Currently in Virginia, all reports are investigated and 60-70 percent are determined to be unfounded. Although some families receive services during an investigation, many families whose cases are determined unfounded receive no services. The focus of the investigation is on determining whether or not abuse/neglect occurred and on identifying the abuser. Little emphasis is on finding solutions for families. An investigation is a time-consuming undertaking and vast resources are expended making a determination as to whether a case is founded or unfounded.

Cost-effective and efficient, the multiple response system is thought to be advantageous because it limits the use of investigation. A family assessment is less adversarial, threatening and intrusive than an investigation and more likely to engender family cooperation. In family assessments there would be no determination of whether the case is founded or unfounded and no entry into the central registry. The role of the CPS worker would be to identify the problem and provide immediate support, treatment and services to the family without assigning blame. After completion of the assessment, a family may decline services. A local department may switch a case from family assessment to investigation at any time it is warranted due to the receipt of new information.

There are no evaluations of multiple response systems in other states because the programs recently originated. However, most states are finding that 70-75 percent of the reports are family assessments and 25-30 percent are investigations. Missouri has found that three percent of the cases initially classified as family assessments must be reclassified as investigations and vice versa. The subcommittee met with the State Board of Social Services with Michael W. Weber, director of the Program for Community Protection of Children in St. Paul, Minnesota, and Fred Simmens, assistant deputy director, Division of Family Services, Missouri.

IV. FINDINGS AND CONCLUSIONS

As mentioned earlier, current law emphasizes investigations and the making of a determination that a case against an alleged perpetrator of child abuse or neglect is founded or unfounded. Numerous resources are poured into making this determination, and there is insufficient emphasis on providing services.

Because alleged perpetrators are very concerned about whether their names go in the central registry, a lot of staff time and resources are devoted to appeals. It is questionable whether this allocation of time and money provides the best protection for children.

Although false reports of abuse/neglect are sometimes made during divorce or child custody disputes, actual child abuse/neglect occurs and can be the cause of a marital breakup.

The subcommittee spent considerable time discussing what the appropriate standard of evidence for a founded determination of child abuse or neglect should be. Members considered, but did not recommend, lowering the standard of proof to preponderance of the evidence. Although the subcommittee discussed revising the appellate process to include a trial de novo as a means of balancing a lowered standard of evidence, members rejected this alternative. However, Senate Bill 621

was introduced by Senator Gartlan, independent of the subcommittee's recommendation. As introduced, the bill lowered the standard of proof to a preponderance of the evidence. An amendment in the nature of a substitute added a trial de novo and the bill was withdrawn by the patron.

V. RECOMMENDATIONS

Multiple Response System

1. The use of a multiple response system offers promise as a means of intervening in troubled families' problems and concentrating CPS services more effectively. The subcommittee recommends that a multiple response system be developed as a pilot project to test its potential.

2. The Joint Subcommittee Studying the Child Protective Services System in the Commonwealth should be continued for three years to monitor the pilot multiple response system.

Training

3. Training and continuing education for child protective services workers and supervisors should be mandatory. Students in these courses should be eligible for CEU credit.

4. Because domestic violence plays a significant role in child abuse/neglect, CPS workers should be trained in the dynamics of domestic violence. The existing VISSTA course on domestic violence should be mandatory for CPS workers.

5. Instead of pursuing licensure or certification of CPS workers at this time, the subcommittee recommends that the effect of mandatory training be evaluated.

6. Improved training and strong agency supervision must be used to hold the CPS system accountable for violations of CPS laws, policies and regulations.

7. The State Department of Social Services should clarify in its training that CPS workers have the responsibility and ability to protect siblings of a reported child who may be at-risk but were not the subject of the report.

Investigations

8. If a family under investigation for child abuse/neglect moves to a different locality prior to the completion of the investigation, the investigation should be continued in the new locality. Under some circumstances the CPS workers from the first locality should be allowed to complete the investigation.

9. Local law enforcement and Commonwealth's attorneys should be encouraged to participate in joint investigations with local departments of social services in cases that CPS must report to law enforcement.

10. The subcommittee should send a letter and a copy of this report to the Commonwealth's Attorneys' Services Council and should explore the possibility of presenting this information at its annual meeting.

False Allegations of Child Abuse

11. There are a number of instances when false abuse/neglect reports are deliberately made to CPS. Making a fraudulent report of child abuse/neglect should be a misdemeanor. False reports cause unnecessary turmoil for persons alleged to have committed abuse or neglect, and the investigation of false reports is a drain on limited CPS resources.

12. The General Assembly should communicate to the Virginia State Bar and the Virginia Bar Association its strong disapproval of the reported practice of some attorneys of recommending that their clients make fictitious child abuse/neglect allegations in custody disputes. Sanctions should be imposed on attorneys who engage in this behavior. However, reports received during divorce or child custody disputes should be investigated on their merits and not summarily dismissed.

Staff and Funding

13. The General Assembly should direct the Department of Social Services to determine the necessary level of CPS staffing and compensation and ensure that local departments have adequate funds to hire these staff.

14. The General Assembly has not provided adequate funding for localities to provide necessary services to families once children have been identified as abused or neglected. Homemaker and case aid services, mental health treatment and parenting classes are among the services for which funding should be available.

Improving Communication

15. Virginia should establish an automated central information system where all CPS contact with a family can be recorded. Access to the information system should be limited to CPS staff and should not be available for employment screening.

16. The State Department of Social Services should encourage local departments of social services to communicate with juvenile and domestic relations district court judges regarding how CPS workers can more productively use their time and still be readily available for court appearances.

VI. 1996 LEGISLATION

The following legislation was passed by the 1996 General Assembly and was recommended by the Joint Subcommittee Studying the Child Protective Services System in the Commonwealth (HJR 502) and the House Committee on Health, Welfare and Institutions' Special Subcommittee Studying the Death of Valerie Smelser (Appendix F).

BILL NUMBER: House Bill 34; Senate Bill 11
PATRON: Puller; Woods
SUMMARY: **Child protective services.** Requires records of unfounded cases to be kept for one year. Such records would be accessible only to the state and local departments of social services and would be purged in one year if there are no subsequent reports regarding the same child or alleged perpetrator. Currently records of unfounded reports must be purged within 30 days of making the unfounded determination.

BILL NUMBER: House Bill 36; Senate Bill 12
PATRON: Brickley; Woods
SUMMARY: **Child protective services.** Requires the State Department of Social Services to establish a three-year pilot multiple response system, in three to five areas of the state, for responding to reports of child abuse or neglect. Rather than requiring a full-scale investigation of every report, the system requires reports to be evaluated by the local department of social services. Less serious reports will be subject to a family assessment rather than investigation. The emphasis will be on offering services rather than on determining whether or not abuse or neglect occurred. In family assessment cases no disposition will be entered into the central registry.

BILL NUMBER: House Bill 37; Senate Bill 10
PATRON: Melvin; Gartlan
SUMMARY: **Child abuse and neglect.** Provides that any person age 14 or older who makes a fraudulent report is guilty of a Class 4 misdemeanor. For a second conviction, it is a Class 2 misdemeanor. The subject of the records may have the records purged upon presenting proof of a conviction. As introduced the bill was limited to adults.

BILL NUMBER: House Joint Resolution 11; Senate Joint Resolution 8
PATRON: Brickley; Woods
SUMMARY: **Continuing the Joint Subcommittee Studying Child Protective Services.** Continues the Joint Subcommittee Studying the Child Protective Services in the Commonwealth, which was established by House Joint Resolution 502 (1995). The joint subcommittee is continued for the purpose of monitoring the implementation of a pilot multiple response system that it has recommended to the 1996 General Assembly.

VII. APPENDICES

House Joint Resolution 502 (1995) Appendix A

House Joint Resolution 481 (1995) Appendix B

House Bill 465 (As introduced) (1994) Appendix C

House Bill 465 (As carried over) (1994) Appendix C

**Summary of the Study of the Child
Protective Services Appeals Process Appendix D**

**House Bill 465
State Department of Social Services 1994**

House Bill 465 (Passed) (1995) Appendix E

State Department of Social Services Appendix F

Child Protective Services Training Initiatives

1996 Legislation Appendix G

GENERAL ASSEMBLY OF VIRGINIA -- 1995 SESSION

HOUSE JOINT RESOLUTION NO. 502

Establishing a joint subcommittee to study the child protective services system in the Commonwealth.

Agreed to by the House of Delegates, February 4, 1995

Agreed to by the Senate, February 21, 1995

WHEREAS, the child protective services system was established by the General Assembly in 1975; and

WHEREAS, the General Assembly established the child protective services system for the purpose of identifying children who are being abused or neglected, of assuring that protective services will be made available to an abused or neglected child in order to protect such child and his siblings and to prevent further abuse or neglect, and of preserving the family life of the parents and children, where possible, by enhancing parental capacity for adequate child care; and

WHEREAS, the Child Protective Services Unit within the State Department of Social Services provides guidance and technical assistance to the local departments of social services who are charged with investigating reports of alleged child abuse or neglect; and

WHEREAS, pursuant to regulations promulgated by the State Board of Social Services, local departments of social services determine whether a case of child abuse or neglect is classified as unfounded, reason to suspect or founded; and

WHEREAS, a person who is suspected of or who is found to have committed child abuse or neglect may appeal the finding of the local department, first to the local department and then to a hearing officer employed by the State Department of Social Services and if still aggrieved, may appeal to the circuit court whose role is limited to a review of the record; and

WHEREAS, the State Board of Social Services has the authority to promulgate regulations governing the administrative appeals process, including the steps that accused persons may use to defend themselves; and

WHEREAS, current child protective services procedures require those accused of child abuse and neglect to prove their innocence rather than following the established rule of law which presumes that a person is innocent until proven guilty; and

WHEREAS, formal rules of evidence are not used in the child protective services administrative appeals process and the hearing officer has the authority to limit the introduction of witnesses, documents and other materials that an accused person may deem necessary to defend himself; and

WHEREAS, local departments of social services have the authority to redact confidential portions of the case record before providing it to an appellant, and there is considerable variation among the 124 local departments of social services in the amount of the case record that is redacted, and there is also variation in how the local conference is conducted; and

WHEREAS, the State Department of Social Services maintains a central registry containing the names of persons whose child abuse or neglect case was determined to be founded or reason to suspect; and

WHEREAS, the central registry is routinely checked for employment screenings for many jobs that have contact with children, and questions have been raised as to whether this is an appropriate use of the central registry; and

WHEREAS, in November of 1994 the State Department of Social Services completed a study of the child protective services appeals process and made a number of recommendations that would improve the process; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study, evaluate and make recommendations concerning the child protective services system in the Commonwealth. The joint subcommittee shall review (i) the adequacy of investigatory training received by child protective services caseworkers, (ii) the categories of complaint dispositions, particularly the reason to suspect category, (iii) access to and use of the central registry, (iv) the child protective services appeals process, (v) proper procedures for editing investigative reports given to appellants, (vi) the rights of appellants to present supporting witnesses and documents and (vii) the implementation of recommendations of the State Department of Social Services' November 1994 study of the child protective services appeals process. The joint subcommittee shall be composed of

seven members: four shall be members of the House of Delegates to be appointed by the Speaker of the House; and three shall be members of the Senate to be appointed by the Senate Committee on Privileges and Elections. The Department of Social Services, the Executive Secretary of the Supreme Court, and the Office of the Attorney General shall provide assistance to the joint subcommittee.

The direct costs of this study shall not exceed \$6,300.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1996 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

Appendix B
1995 SESSION

LD3038382

HOUSE JOINT RESOLUTION NO. 481
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Rules
on February 17, 1995)
(Patron Prior to Substitute—Delegate Newman)

Directing the joint subcommittee studying child protective services pursuant to House Joint Resolution No. 502 (1995) to examine the use of allegations of child abuse to obtain custody of a child.

WHEREAS, the Joint Subcommittee Studying Child Abuse Reporting and Investigation Procedures, pursuant to House Joint Resolution No. 127 (1988), received anecdotal evidence of an apparent increase in the incidence of false complaints of abuse or neglect as a weapon in contested divorce, custody and visitation cases; and

WHEREAS, because it was suggested that in some cases attorneys recommended to their clients that this weapon be used, the joint subcommittee recommended in its report, House Document No. 47, 1989, that the Virginia State Bar analyze all available data, including the data on unfounded complaints of child abuse as it becomes available to the Department of Social Services to determine whether attorneys so advise their clients, and, if so, that the Department develop methods to stop this abuse of the child protective services system and impose appropriate sanctions; and

WHEREAS, concern remains that this type of conduct by the parties to contested actions, and their attorneys, threatens the foundation upon which the child protective services system is based, the credibility of that system, and the laws of the Commonwealth intended to protect children: now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the joint subcommittee studying child protective services pursuant to House Joint Resolution No. 502 (1995) be directed to examine the use of allegations of child abuse to obtain custody of a child. The joint subcommittee shall determine the extent of the problem and propose deterrents to and sanctions for the use of false allegations of abuse. The joint subcommittee shall seek input and assistance from the Virginia State Bar, the Office of the Executive Secretary of the Supreme Court and the Department of Social Services.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1996 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Official Use By Clerks

Passed By

The House of Delegates

without amendment
with amendment
substitute
substitute w/amdt

Passed By The Senate

without amendment
with amendment
substitute
substitute w/amdt

Date: _____

Date: _____

Clerk of the House of Delegates

Clerk of the Senate

Appendix C
1994 SESSION

LD0991344

HOUSE BILL NO. 465

Offered January 24, 1994

A BILL to amend and reenact § 63.1-248.6:1 of the Code of Virginia, relating to administrative appeals of child protective services dispositions.

—————
Patron—Mayer
—————

Referred to Committee on Health, Welfare and Institutions
—————

Be it enacted by the General Assembly of Virginia:

1. That § 63.1-248.6:1 of the Code of Virginia is amended and reenacted as follows:

§ 63.1-248.6:1. Appeals of certain actions of local departments.

A. A person who is suspected of or is found to have committed abuse or neglect may, within thirty days of being notified of that determination, request the local department rendering such determination to amend the determination and the local department's related records. The local department shall hold an informal conference or consultation in order for such person to informally present factual data, arguments or submissions of proof to the local department. If the local department refuses the request for amendment or fails to act within forty-five days after receiving such request, the person may, within thirty days thereafter, petition the Commissioner, who shall grant a hearing to determine whether it appears, by a preponderance of the evidence that the determination or record contains information which is irrelevant or inaccurate regarding the commission of abuse or neglect by the person who is the subject of the determination or record and therefore shall be amended. A person who is the subject of a report who requests an amendment to the record, as provided above, has the right to obtain an extension for an additional specified period of up to sixty days by requesting in writing that the forty-five days in which the local department must act be extended. The extension period, which may be up to sixty days, shall begin at the end of the forty-five days in which the local department must act. When there is an extension period, the thirty-day period to request an administrative hearing shall begin on the termination of the extension period.

B. The Commissioner shall designate and authorize one or more members of his staff to conduct such hearings. The decision of any staff member so designated and authorized shall have the same force and effect as if the Commissioner had made the decision. The State Board of Social Services shall promulgate regulations necessary for the conduct of such hearings. 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 promulgated 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 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 4 (§ 9-6.14:15 et seq.) of the Administrative Process Act.

C. Whenever such an appeal 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

1 frames provided by law and regulation.

2 *D. Any party to an appeal under this section shall have the right to petition the*
3 *juvenile and domestic relations court or family court, whichever is appropriate, to compel*
4 *the production of documents or to compel witnesses to attend the hearing and present*
5 *evidence. The court shall grant the petition upon good cause shown and compel the*
6 *production of such documents or the attendance of such witnesses.*

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Official Use By Clerks	
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Date: _____	Date: _____
_____ Clerk of the House of Delegates	_____ Clerk of the Senate

1994 SESSION

LD3408344

1 HOUSE BILL NO. 465
2 AMENDMENT IN THE NATURE OF A SUBSTITUTE
3 (Proposed by the House Committee for Courts of Justice
4 on February 11, 1994)

5 (Patron Prior to Substitute—Delegate Mayer)

6 A BILL to amend and reenact §§ 16.1-241, as it is currently effective and as it will
7 become effective, and 63.1-248.6:1 of the Code of Virginia, relating to administrative
8 appeals of child protective services dispositions; jurisdiction.

9 Be it enacted by the General Assembly of Virginia:

10 1. That §§ 16.1-241, as it is currently effective and as it will become effective, and
11 63.1-248.6:1 of the Code of Virginia are amended and reenacted as follows:

12 § 16.1-241. (For effective date - See note) Jurisdiction.

13 The judges of the juvenile and domestic relations district court elected or appointed
14 under this law shall be conservators of the peace within the corporate limits of the cities
15 and the boundaries of the counties for which they are respectively chosen and within one
16 mile beyond the limits of such cities and counties. Except as hereinafter provided, each
17 juvenile and domestic relations district court shall have, within the limits of the territory
18 for which it is created, exclusive original jurisdiction, and within one mile beyond the
19 limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the
20 adjoining city or county over all cases, matters and proceedings involving:

21 A. The custody, visitation, support, control or disposition of a child:

22 1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a
23 status offender, or delinquent;

24 2. Who is abandoned by his parent or other custodian or who by reason of the absence
25 or physical or mental incapacity of his parents is without parental care and guardianship;

26 2a. Who is at risk of being abused or neglected by a parent or custodian who has been
27 adjudicated as having abused or neglected another child in the care of the parent or
28 custodian;

29 3. Whose custody, visitation or support is a subject of controversy or requires
30 determination. In such cases jurisdiction shall be concurrent with and not exclusive of
31 courts having equity jurisdiction, except as provided in § 16.1-244;

32 4. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or
33 § 63.1-204 or whose parent or parents for good cause desire to be relieved of his care and
34 custody;

35 5. Where the termination of residual parental rights and responsibilities is sought. In
36 such cases jurisdiction shall be concurrent with and not exclusive of courts having equity
37 jurisdiction, as provided in § 16.1-244;

38 6. Who is charged with a traffic infraction as defined in § 46.2-100.

39 The authority of the juvenile court to adjudicate matters involving the custody,
40 visitation, support, control or disposition of a child shall not be limited to the consideration
41 of petitions filed by a mother, father or legal guardian but shall include petitions filed at
42 any time by any party with a legitimate interest therein. A party with a legitimate interest
43 shall be broadly construed and shall include, but not be limited to, grandparents,
44 stepparents, former stepparents, blood relatives and family members. The authority of the
45 juvenile court to consider a petition involving the custody of a child shall not be proscribed
46 or limited where the child has previously been awarded to the custody of a local board of
47 social services.

48 B. The admission of minors for inpatient treatment in a mental health facility in
49 accordance with the provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the
50 commitment of a mentally ill person or judicial certification of eligibility for admission to
51 a treatment facility of a mentally retarded person in accordance with the provisions of
52 Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1. Jurisdiction of the
53 commitment and certification of adults shall be concurrent with the general district court.

54 C. Except as provided in subsections D and E hereof, judicial consent to such activities

1 as may require parental consent may be given for a child who has been separated from
2 his parents, guardian, legal custodian or other person standing in loco parentis and is in
3 the custody of the court when such consent is required by law.

4 D. Judicial consent for emergency surgical or medical treatment for a child who is
5 neither married nor has ever been married, when the consent of his parent, guardian, legal
6 custodian or other person standing in loco parentis is unobtainable because such parent,
7 guardian, legal custodian or other person standing in loco parentis (i) is not a resident of
8 this Commonwealth, (ii) his whereabouts is unknown, (iii) he cannot be consulted with
9 promptness, reasonable under the circumstances or (iv) fails to give such consent or
10 provide such treatment when requested by the judge to do so.

11 E. Any person charged with deserting, abandoning or failing to provide support for any
12 person in violation of law.

13 F. Any parent, guardian, legal custodian or other person standing in loco parentis of a
14 child:

15 1. Who has been abused or neglected;

16 2. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or
17 § 63.1-204 or is otherwise before the court pursuant to subdivision A 4 of this section;

18 3. Who has been adjudicated in need of services, in need of supervision, or delinquent,
19 if the court finds that such person has by overt act or omission induced, caused,
20 encouraged or contributed to the conduct of the child complained of in the petition.

21 G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal
22 custodian or other person standing in loco parentis for the purpose of obtaining treatment,
23 rehabilitation or other services which are required by law to be provided for that child or
24 such child's parent, guardian, legal custodian or other person standing in loco parentis.
25 Jurisdiction in such cases shall be concurrent with and not exclusive of that of courts
26 having equity jurisdiction as provided in § 16.1-244.

27 H. Judicial consent to apply for work permit for a child when such child is separated
28 from his parents, legal guardian or other person standing in loco parentis.

29 I. The prosecution and punishment of persons charged with ill-treatment, abuse,
30 abandonment or neglect of children or with any violation of law which causes or tends to
31 cause a child to come within the purview of this law, or with any other offense against the
32 person of a child. In prosecution for felonies over which the court has jurisdiction,
33 jurisdiction shall be limited to determining whether or not there is probable cause.

34 J. All offenses in which one family or household member is charged with an offense in
35 which another family or household member is the victim. In prosecution for felonies over
36 which the court has jurisdiction, jurisdiction shall be limited to determining whether or not
37 there is probable cause. For purposes of this subsection, "family or household member," as
38 defined in § 16.1-228, shall also be construed to include parent and child, stepparent and
39 stepchild, brothers and sisters, and grandparent and grandchild, regardless of whether such
40 persons reside in the same home.

41 K. Petitions filed by a natural parent, whose parental rights to a child have been
42 voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court
43 order terminating such parental rights. No such petition shall be accepted, however, after
44 the child has been placed in the home of adoptive parents.

45 L. Any person who seeks spousal support after having separated from his spouse. A
46 decision under this subdivision shall not be res judicata in any subsequent action for
47 spousal support in a circuit court. A circuit court shall have concurrent original jurisdiction
48 in all causes of action under this subdivision.

49 M. Petitions filed for the purpose of obtaining an order of protection pursuant to §
50 16.1-253.1 or § 16.1-279.1.

51 N. Any person who escapes or remains away without proper authority from a
52 residential care facility in which he had been placed by the court or as a result of his
53 commitment to the Virginia Department of Youth and Family Services.

54 O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.) of

Appendix D

Study of the Child Protective Services Appeal Process House Bill No. 465 State Department of Social Services

The State Department of Social Services formed an advisory committee, representative of parties who participate in the CPS appeals process, to provide comments. An internal work group considered information gathered from a variety of sources. Statistics regarding the existing CPS appeals process were analyzed. In addition a survey of CPS disposition procedures and appeals processes in other states was conducted. In FY 1992 1.6% of all "founded" or "reason to suspect" dispositions were appealed at the state level. In FY 1993, 3.6% of all dispositions were appealed. In both years, 48% of cases appealed to the state resulted in the agency's disposition being amended or reversed. The study, which was completed in November 1994, recommended that the current CPS appeals process continue, but that consideration should be given to certain enhancements. The enhancements are listed below. In 1995 the Joint Subcommittee the Child Protective Services System in the Commonwealth received updates on the implementation of the enhancements. The updates are listed below each enhancement.

1994 Recommendations, Child Protective Services Investigations

Reason to Suspect

1. The Department must clarify its "reason to suspect" definition to assist local agency workers.

Update: In February 1995, the Virginia Court of Appeals ruled in Jackson v. Marshall, 19 Va. App. 628, 454 S.E. 2d 23 (1995) that there is no statutory authority to make a "reason to suspect" determination. Because of this court decision, the Department directed local departments to stop making the reason to suspect finding. The Department purged the central registry of all identifying information associated with the reason to suspect disposition and instructed local departments to purge the physical records.

Tape Recorded Interviews

2. Local agencies that currently tape record interviews between the investigating CPS worker and the child should be encouraged to continue.

Update: For many years the Department has encouraged the use of taping as a form of documentation. The Department recommends further study before

requiring audio or video taping of all interviews, due to legal and technical issues as well as cost.

Documenting Case Files

3. Local agencies must document their case files completely and accurately so that the disposition is supported by the contents of the record.

Update: Current CPS policy specifically requires documentation of facts and conclusions in making dispositions. Passage of HB 465 strengthened this by directing agencies on what information is to be withheld, if any, and on the release of all other information used to reach the CPS disposition when the party investigated for child abuse or neglect requests information.

The Department constantly monitors and provides feedback to local agencies on CPS cases. In the two years ending December 31, 1994, the Department reviewed and commented on 1,689 cases handled by local staff as part of an ongoing monitoring system. Local departments receive guidance through both correspondence and site visits.

The Department also provides direction on documentation in CPS policy and skills training.

Training CPS Workers

4. The Department must take steps to see that new CPS workers receive more policy training within the first year of employment so they will be better prepared to make decisions affecting children and their families.

Update: Competency-based training for CPS workers (HJR 82) will be implemented in January 1996. The Department has mandated that all new CPS workers and supervisors complete policy training within their probationary period (which in most instances is the first six months of employment).

Central Registry

5. The names of alleged abusers must be excluded from employment searches during the administrative appeals process.

Update: The Department does not release the names of alleged abusers during the administrative appeals process.

6. The General Assembly may wish to restrict access to the central registry.

Update: The original purpose of the central registry was solely to alert local department staff of any documented history of abuse or neglect by caretakers. Use

of the central registry for employment screening has evolved over the years. 43 states and the District of Columbia have a central registry, 30 use the registry for employment screening. Mandated employment screening in most other states occurs only for licensed child care, certified child care and foster care. Virginia goes beyond these categories and permits any person, with the notarized consent of the alleged abuser, to access the central registry. The appeals process provides a method for individuals identified as having abused or neglected children to clear their names from the central registry. More limited access to information in the central registry should reduce the need for CPS appeals.

Appeals

7. The Department must arrange for or provide training to local agencies and their legal counsel on proper procedures for editing investigative records that are given to CPS appellants to be certain appellants receive sufficient information to understand the evidence used to make the determination of child abuse or neglect.

Update: The Department and the Office of the Attorney General provided joint training on proper procedures for editing investigative records given to CPS appellants to all local departments in June 1995.

8. The current practice of placing the burden of proof on the appellant in the CPS appeals process should be reviewed by the Department.

Update: After discussions with the Office of the Attorney General, the Department supports a legislative or regulatory change of the burden of proof in the CPS hearing to require both parties to prove their case. Despite the language in the statute, in practical terms, the current CPS appeal process consists of a dual burden. The appellant must first challenge the accuracy of the disposition and the record and then the burden shifts to the agency to prove its case.

9. The Department should issue an updated local conference handbook to assist local directors in the conduct of the informal agency conference with the appellant.

Update: The Department revised the local agency handbook and provided training in June for this process. Comments from the training sessions were incorporated into the handbook and the final version was sent to local agencies in September 1995.

Record Purging

10. Local agency CPS supervisors must monitor the purging of CPS physical case records to protect the privacy of individuals accused, and later cleared, of child abuse or neglect; and

Update: The Department prepared and distributed a policy alert to remind local agencies of this responsibility and the potential liability for not closely monitoring this procedure.

11. The Department should continue the newly streamlined system of amending or purging the name of the alleged abuser in the central registry following the decision of the CPS hearing officer.

Update: CPS hearing officers have direct access to the central registry and immediately update the central registry to reflect any change resulting from the appeal decision. This saves days and sometimes weeks, in updating the CPS disposition related to the appellant.

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 7

An Act to amend and reenact §§ 16.1-241, as it is currently effective and as it may become effective, and 63.1-248.6:1 of the Code of Virginia, relating to appeals of child protective services dispositions; jurisdiction.

[H 465]

Approved February 16, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-241, as it is currently effective and as it may become effective, and 63.1-248.6:1 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-241. Jurisdiction.

The judges of the juvenile and domestic relations district court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county over all cases, matters and proceedings involving:

A. The custody, visitation, support, control or disposition of a child:

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent, except where the jurisdiction of the juvenile court has been terminated under the provisions of § 16.1-269.6;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

3. Whose custody, visitation or support is a subject of controversy or requires determination. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, except as provided in § 16.1-244;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or whose parent or parents for good cause desire to be relieved of his care and custody;

5. Where the termination of residual parental rights and responsibilities is sought. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in § 16.1-244;

6. Who is charged with a traffic infraction as defined in § 46.2-100.

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party with a legitimate interest shall not include any person (i) whose parental rights have been involuntarily terminated by court order if the child subsequently has been legally adopted, or (ii) who has been convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366 when the child who is the subject of the petition was conceived as a result of such violation. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

B. The admission of minors for inpatient treatment in a mental health facility in accordance with the provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the commitment of a mentally ill person or judicial certification of eligibility for admission to a treatment facility of a mentally retarded person in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of

Title 37.1. Jurisdiction of the commitment and certification of adults shall be concurrent with the general district court.

C. Except as provided in subsections D and H hereof, judicial consent to such activities as may require parental consent may be given for a child who has been separated from his parents, guardian, legal custodian or other person standing in loco parentis and is in the custody of the court when such consent is required by law.

D. Judicial consent for emergency surgical or medical treatment for a child who is neither married nor has ever been married, when the consent of his parent, guardian, legal custodian or other person standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person standing in loco parentis (i) is not a resident of this Commonwealth, (ii) his whereabouts is unknown, (iii) he cannot be consulted with promptness, reasonable under the circumstances or (iv) fails to give such consent or provide such treatment when requested by the judge to do so.

E. Any person charged with deserting, abandoning or failing to provide support for any person in violation of law.

F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

1. Who has been abused or neglected;
2. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or is otherwise before the court pursuant to subdivision A 4 of this section;
3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court finds that such person has by overt act or omission induced, caused, encouraged or contributed to the conduct of the child complained of in the petition.

G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services which are required by law to be provided for that child or such child's parent, guardian, legal custodian or other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not exclusive of that of courts having equity jurisdiction as provided in § 16.1-244.

H. Judicial consent to apply for work permit for a child when such child is separated from his parents, legal guardian or other person standing in loco parentis.

I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or neglect of children or with any violation of law which causes or tends to cause a child to come within the purview of this law, or with any other offense against the person of a child. In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause.

J. All offenses in which one family or household member is charged with an offense in which another family or household member is the victim and all offenses under § 18.2-49.1.

In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. For purposes of this subsection, "family or household member," as defined in § 16.1-228, shall also be construed to include parent and child, stepparent and stepchild, brothers and sisters, and grandparent and grandchild, regardless of whether such persons reside in the same home.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such parental rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive parents.

L. Any person who seeks spousal support after having separated from his spouse. A decision under this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court. A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or § 16.1-279.1.

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Youth and Family Services.

O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.) of this

chapter.

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the juvenile and domestic relations district court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

R. Petitions for the purpose of obtaining an emergency protective order pursuant to § 16.1-253.4.

S. Petitions filed by school boards against a parent pursuant to § 16.1-241.2.

T. *Petitions to enforce any request for information or subpoena that is not complied with or to review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect pursuant to § 63.1-248.6:1.*

The ages specified in this law refer to the age of the child at the time of the acts complained of in the petition.

§ 16.1-241. (Delayed Effective Date) Jurisdiction.

The judges of the family court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each family court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the family court or courts of the adjoining city or county over all cases, matters and proceedings involving:

A. The custody, visitation, support, control or disposition of a child:

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent, except where the jurisdiction of the family court has been terminated under the provisions of § 16.1-269.6;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

3. Whose custody, visitation or support is a subject of controversy or requires determination;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or whose parent or parents for good cause desire to be relieved of his care and custody;

5. Where the termination of residual parental rights and responsibilities is sought;

6. Who is charged with a traffic infraction as defined in § 46.2-100.

The authority of the family court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party with a legitimate interest shall not include any person (i) whose parental rights have been involuntarily terminated by court order if the child subsequently has been legally adopted, or (ii) who has been convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366 when the child who is the subject of the petition was conceived as a result of such violation. The authority of the family court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

B. The admission of minors for inpatient treatment in a mental health facility in accordance with the provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the commitment of a mentally ill person or judicial certification of eligibility for admission to a treatment facility of a mentally retarded person in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1. Jurisdiction of the commitment and certification of adults shall be concurrent with the general district court.

C. Except as provided in subsections D and H hereof, judicial consent to such activities as may

require parental consent may be given for a child who has been separated from his parents, guardian, legal custodian or other person standing in loco parentis and is in the custody of the court when such consent is required by law.

D. Judicial consent for emergency surgical or medical treatment for a child who is neither married nor has ever been married, when the consent of his parent, guardian, legal custodian or other person standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person standing in loco parentis (i) is not a resident of this Commonwealth, (ii) his whereabouts is unknown, (iii) cannot be consulted with promptness, reasonable under the circumstances or (iv) fails to give such consent or provide such treatment when requested by the judge to do so.

E. Any person charged with deserting, abandoning or failing to provide support for any person in violation of law pursuant to Chapter 5 (§ 20-61 et seq.) of Title 20.

F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

1. Who has been abused or neglected;
2. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or is otherwise before the court pursuant to subdivision A 4 of this section;
3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court finds that such person has by overt act or omission induced, caused, encouraged or contributed to the conduct of the child complained of in the petition.

G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services which are required by law to be provided for that child or such child's parent, guardian, legal custodian or other person standing in loco parentis.

H. Judicial consent to apply for work permit for a child when such child is separated from his parents, legal guardian or other person standing in loco parentis.

I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or neglect of children or with any violation of law which causes or tends to cause a child to come within the purview of this law, or with any other offense against the person of a child. In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause.

J. All offenses in which one family or household member is charged with an offense in which another family or household member is the victim and all offenses under § 18.2-49.1.

In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. For purposes of this subsection, "family or household member," as defined in § 16.1-228, shall also be construed to include parent and child, stepparent and stepchild, brothers and sisters, and grandparent and grandchild, regardless of whether such persons reside in the same home.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such parental rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive parents.

L. Any person who seeks spousal support after having separated from his spouse.

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or § 16.1-279.1.

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Youth and Family Services.

O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.) of this chapter.

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered by a family court upon the filing of a certified copy of such order in the family court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

R. Petitions for the purpose of obtaining an emergency protective order pursuant to § 16.1-253.4.

- S. Suits for divorce and for annulling or affirming marriage in accordance with Title 20.
- T. Suits for separate maintenance.
- U. Suits for equitable distribution based on a foreign decree in accordance with § 20-107.3.
- V. Petitions for adoption.
- W. Petitions for change of name when incident to suits for annulling or affirming marriage, divorce, or adoption or when ancillary to any action within the jurisdiction of the family court.
- X. Petitions regarding records of birth pursuant to Chapter 7 (§ 32.1-249 et seq.) of Title 32.1.
- Y. Judicial review of school board actions pursuant to § 22.1-87 and of hearing officer decisions pursuant to §§ 22.1-214 and 22.1-214.1.
- Z. Petitions filed by school boards against a parent pursuant to § 16.1-241.2.
- AA. *Petitions to enforce any request for information or subpoena that is not complied with or to review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect pursuant to § 63.1-248.6:1.*

The ages specified in this law refer to the age of the child at the time of the acts complained of in the petition.

§ 63.1-248.6:1. Appeals of certain actions of local departments.

A. A person who is suspected of or is found to have committed abuse or neglect may, within thirty days of being notified of that determination, request the local department rendering such determination to amend the determination and the local department's related records. *Upon written request, the local department shall provide the appellant all information used in making its determination. Disclosure of the reporter's name or information which may endanger the well-being of a child shall not be released. The identity of collateral witnesses or any other person shall not be released if disclosure may endanger their life or safety. Information prohibited from being disclosed by state or federal law or regulation shall not be released.* The local department shall hold an informal conference or consultation ~~in order for~~ where such person, who may be represented by counsel, shall be entitled to informally present testimony of witnesses, documents, factual data, arguments or other submissions of proof to the local department. *With the exception of the director of the local department, no person whose regular duties include substantial involvement with child abuse and neglect cases shall preside over the informal conference.* If the local department refuses the request for amendment or fails to act within forty-five days after receiving such request, the person may, within thirty days thereafter, petition the Commissioner, who shall grant a hearing to determine whether it appears, by a preponderance of the evidence, that the determination or record contains information which is irrelevant or inaccurate regarding the commission of abuse or neglect by the person who is the subject of the determination or record and therefore shall be amended. A person who is the subject of a report who requests an amendment to the record, as provided above, has the right to obtain an extension for an additional specified period of up to sixty days by requesting in writing that the forty-five days in which the local department must act be extended. The extension period, which may be up to sixty days, shall begin at the end of the forty-five days in which the local department must act. When there is an extension period, the thirty-day period to request an administrative hearing shall begin on the termination of the extension period.

B. The Commissioner shall designate and authorize one or more members of his staff to conduct such hearings. The decision of any staff member so designated and authorized shall have the same force and effect as if the Commissioner had made the decision. *The hearing officer shall have the authority to issue subpoenas for the production of documents and the appearance of witnesses. The hearing officer is 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 State Board of Social Services shall promulgate 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 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 State 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 juvenile and domestic relations court or family court, as the case may be, 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 promulgated 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 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 4 (§ 9-6.14:15 et seq.) of the Administrative Process Act.

C. Whenever ~~such~~ 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.

Appendix F
State Department of Social Services
Child Protective Services Training Initiatives.

Mandated Reporter Education Initiatives

Section 63.1-248.7 of the Code of Virginia requires that the child protective services unit in the Virginia Department of Social Services prepare, disseminate, and present educational materials and programs on child abuse and neglect for professionals required by law to report suspected child maltreatment.

Towards this end, the child protective services unit provides the following educational programs and materials:

Medical Professionals

Since 1992, the Department has provided specialized child abuse and neglect medical training and consultation services for Virginia physicians and allied medical professionals on the identification, treatment, and management of suspected child abuse and neglect. Medical training and consultation services are provided through special contract with the Children's Medical Center at the Medical College of Virginia. The lead physician staff for the child abuse project are Drs. Miriam Bar-on and Joseph Zanga. The project provides medical training for staff at MCV and for Virginia health care providers. In 1994-95, the project provided 32 child abuse and neglect medical training sessions for 1,064 Virginia professionals including physicians, nurses, medical students, emergency medical technicians, hospital social workers, judges, and guardian ad litem.

The project has also developed and disseminated specialized medical curriculum and hospital protocol for the management of suspected child abuse and neglect. Technical assistance is available to Virginia hospitals and medical organizations interested in developing protocol or delivering the curriculum.

The project also operates a child abuse and neglect medical consultation hotline at #1-800-KIDS-MCV for Virginia physicians and allied health care providers who have questions concerning the medical evaluation or treatment of suspected abuse and neglect. In addition, the project provides child abuse/neglect medical examinations. In 1994-95, the project received 495 referrals for abuse and neglect medical evaluation.

In 1994, in collaboration with the MCV child abuse project, the child protective services unit developed and distributed 36,000 copies of an information booklet entitled *Assistance for Medical Professionals in the Diagnosis and Management of*

Suspected Child Abuse and Neglect. The booklet is used by Virginia's three university medical teaching hospitals, community hospitals, emergency rescue squads, and other health care providers.

Child Care Providers

Since 1994, the child protective services unit, in conjunction with the Department's Division of Licensing Programs, has provided child abuse and neglect training at 16 regional sites for 582 child care providers including child care centers, family day care homes, and head start programs. Eight sessions for 400 child care providers are planned for the spring 1996.

In 1992, the child protective services unit developed and distributed 35,000 copies of an information booklet entitled *Assistance for Child Care Providers in Recognizing and Reporting Child Abuse and Neglect*. The booklet is used by Virginia child care centers and programs and family day care homes. It was reprinted in 1994. Accompanying curriculum was developed for use by local social services departments in providing training to local day care programs.

In addition to these initiatives, the child protective services unit provides ongoing child abuse and neglect training to child care providers through their professional associations including the Virginia Association for Early Childhood Education, the Virginia Child Care Association, Head Start, and others.

Educators

In 1992, the child protective services unit developed and distributed 85,000 copies of an information booklet entitled *Assistance for Educators in Recognizing and Reporting Child Abuse and Neglect*. The booklet was distributed to Virginia private and public school superintendents and principals with sufficient copies for all professional staff. It was reprinted in 1994 and is available upon request. Accompanying curriculum was developed for use by local social services departments in providing local school training.

Both the educator and child care provider booklets were selected to be included in the Elementary and Early Childhood Education (ERIC) clearinghouse data base maintained by the U.S. Department of Education at the University of Illinois. The booklets were published in the ERIC abstract journal and are available on microfiche.

The educator booklet is also being used in a training demonstration project at the University of North Carolina, School of Social Work.

Other Professionals

The child protective services unit is available to provide discipline specific, specialized training to professional associations and organizations throughout Virginia. In 1995, child abuse/neglect training was provided to hospitals, clergy, family court mediators, and others. Training is also provided for mandated reporters by local social services departments.

The child protective services unit regularly advises mandated reporters of Virginia code changes concerning the reporting of suspected abuse and neglect.

Shaken Baby Initiative

In 1994, the child protective services unit, in collaboration with Children's Hospital of the Kings Daughters, distributed 100,000 copies of an information pamphlet, for parents, on Shaken Baby Syndrome. Pamphlets were distributed to 118 local health departments, 94 hospitals, local social services departments, day care centers, and domestic violence shelters for placement in waiting rooms and places where parents and children assemble.

The pamphlet describes the dangers of shaking a baby, reasons for and management of crying, and resources for parents.

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 791

An Act to amend and reenact § 63.1-248.5:1 of the Code of Virginia, as it is currently effective and as it may become effective, relating to child protective services records.

[H 34]

Approved April 6, 1996

Be it enacted by the General Assembly of Virginia:

1. That § 63.1-248.5:1 of the Code of Virginia, as it is currently effective and as it may become effective, is amended and reenacted as follows:

§ 63.1-248.5:1. Retention of records in unfounded cases; procedures regarding unfounded reports alleged to be made in bad faith or with malicious intent.

A. The local department shall retain the records of any investigation of a report or complaint which is made pursuant to this chapter and which it determines to be unfounded ~~for thirty days from the date the person who is the subject of the report or complaint is notified of such determination in a record which is separate from the central registry and accessible only to the Department and to local departments for child protective services.~~ The purpose of retaining unfounded complaints is to provide local departments with information regarding prior investigations. In no event shall the mere existence of a prior complaint be used to determine that a subsequent complaint is founded. The subject of the report is the person who is alleged to have committed abuse or neglect. The subject of the report shall have access to his own record. The record of the unfounded case shall be purged one year after the date of the report if there are no subsequent founded or unfounded reports regarding the same child or the person who is the subject of the report in that one year. The department shall retain the records for an additional period of up to two years if requested in writing by the person who is the subject of such complaint or report. The child protective services records regarding the petitioner which result from such report shall be purged immediately by any custodian of such records upon presentation to the custodian of a certified copy of a court order that there has been a civil action which determined that the report was made in bad faith or with malicious intent. After purging the records, the custodian shall notify the petitioner in writing that the records have been purged.

B. At the time the Department notifies a person who is the subject of a complaint or report made pursuant to this chapter that such complaint or report is unfounded, it shall notify him *that the record will be retained for one year and* of the availability of the procedures set out in this section regarding reports or complaints alleged to be made in bad faith or with malicious intent.

C. Any person who is the subject of an unfounded report or complaint made pursuant to this chapter who believes that such report or complaint was made in bad faith or with malicious intent may petition the circuit court in the jurisdiction in which the report or complaint was made for the release to such person of the records of the investigation. Such petition shall specifically set forth the reasons such person believes that such report or complaint was made in bad faith or with malicious intent. Upon the filing of such petition, the court shall request and the department shall provide to the court its records of the investigation for the court's in camera review. The petitioner shall be entitled to present evidence to support his petition. If the court determines that there is a reasonable question of fact as to whether the report or complaint was made in bad faith or with malicious intent and that disclosure of the identity of the complainant would not be likely to endanger the life or safety of the complainant, it shall provide to the petitioner a copy of the records of the investigation. The original records shall be subject to discovery in any subsequent civil action regarding the making of a complaint or report in bad faith or with malicious intent.

§ 63.1-248.5:1. (Delayed effective date) Retention of records in unfounded cases; procedures regarding unfounded reports alleged to be made in bad faith or with malicious intent.

A. The local department shall retain the records of any investigation of a report or complaint which is made pursuant to this chapter and which it determines to be unfounded ~~for thirty days from the date the person who is the subject of the report or complaint is notified of such determination in a record which is separate from the central registry and accessible only to the Department and to~~

local departments for child protective services. The purpose of retaining unfounded complaints is to provide local departments with information regarding prior investigations. In no event shall the mere existence of a prior complaint be used to determine that a subsequent complaint is founded. The subject of the report is the person who is alleged to have committed abuse or neglect. The subject of the report shall have access to his own record. The record of the unfounded case shall be purged one year after the date of the report if there are no subsequent founded or unfounded reports regarding the same child or the person who is the subject of the report in that one year. The department shall retain the records for an additional period of up to two years if requested in writing by the person who is the subject of such complaint or report.

B. At the time the Department notifies a person who is the subject of a complaint or report made pursuant to this chapter that such complaint or report is unfounded, it shall notify him *that the record will be retained for one year and* of the availability of the procedures set out in this section regarding reports or complaints alleged to be made in bad faith or with malicious intent.

C. Any person who is the subject of an unfounded report or complaint made pursuant to this chapter who believes that such report or complaint was made in bad faith or with malicious intent may petition the family court in the jurisdiction in which the report or complaint was made for the release to such person of the records of the investigation. Such petition shall specifically set forth the reasons such person believes that such report or complaint was made in bad faith or with malicious intent. Upon the filing of such petition, the court shall request and the department shall provide to the court its records of the investigation for the court's in camera review. The petitioner shall be entitled to present evidence to support his petition. If the court determines that there is a reasonable question of fact as to whether the report or complaint was made in bad faith or with malicious intent and that disclosure of the identity of the complainant would not be likely to endanger the life or safety of the complainant, it shall provide to the petitioner a copy of the records of the investigation. The original records shall be subject to discovery in any subsequent civil action regarding the making of a complaint or report in bad faith or with malicious intent. *The child protective services records regarding the petitioner which result from such report shall be purged immediately by any custodian of such records upon presentation to the custodian of a certified copy of a court order that there has been a civil action which determined that the report was made in bad faith or with malicious intent. After purging the records, the custodian shall notify the petitioner in writing that the records have been purged.*

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 856

An Act to amend the Code of Virginia by adding in Chapter 12.1 of Title 63.1 a section numbered 63.1-248.18, establishing a child protective services multiple response system.

[H 36]

Approved April 9, 1996

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 12.1 of Title 63.1 a section numbered 63.1-248.18 as follows:

§ 63.1-248.18. Establishment of pilot multiple response system.

A. By March 1, 1997, the Department shall establish a multiple response child protective services system in at least three but no more than five areas of the state selected by the Department. Areas may be composed of any combination of one or more counties or cities or both counties and cities. The multiple response system is designed to protect children at risk by effective use of available community resources. When appropriate, families will be offered services through the local department or through community agencies to promote safe, positive relationships within families by emphasizing prevention and assistance; or when otherwise appropriate, local departments will investigate, in conjunction with law-enforcement agencies pursuant to memoranda of understanding, allegations of child abuse or neglect for appropriate intervention or follow up action. The Department shall develop criteria for the selection of pilot areas which shall include an assessment of the effectiveness of the area's plan for community involvement in child protective services and a determination of whether local departments in the area have effective agreements with law-enforcement agencies and the attorney for the Commonwealth ensuring interagency cooperation.

By November 1, 1996, the Department shall submit to the House Committee on Health, Welfare and Institutions and the Senate Committee on Rehabilitation and Social Services a report outlining the plan for the multiple response system, including copies of any requests for proposals and the criteria developed for selection of pilot areas.

The pilot programs shall be subject to the provisions of this chapter, State Board regulations and Department policies except to the extent that such regulations and policies are inconsistent with the provisions of this section.

The State Board shall promulgate regulations to implement the provisions of this section to be effective within 280 days of July 1, 1996.

B. Upon receipt of a report of child abuse or neglect, the local department, after making an initial assessment shall determine whether the appropriate level of intervention is (i) investigation, (ii) family assessment and services or (iii) referral by the local department for services even though the report does not meet the definition of abuse or neglect. The Department shall develop an assessment instrument which shall be used to determine the appropriate level of intervention. A report may be reclassified at any time during the local department's involvement with the case.

C. The local department may investigate any report of child abuse or neglect but the following reports of child abuse or neglect shall be investigated regardless of the outcome of the assessment: (i) sexual abuse, (ii) child fatality, (iii) abuse or neglect resulting in serious injury as defined in § 18.2-371.1, (iv) child has been taken into the custody of the local department of social services or (v) cases involving a caretaker at a state licensed child day center, religiously exempt child day center, regulated family day home, private or public school, or hospital or any institution.

D. Cases determined to be appropriate for investigation shall be investigated in accordance with the provisions of this chapter. Investigations shall be completed within forty-five days of receipt of the report. However, upon written justification by the local department, such investigation may be extended up to a total of sixty days. Upon completion of the investigation, the department shall consult with the child's family about services to address the family's needs.

In cases determined to be appropriate for family assessment, the local department shall immediately contact the subject of the report and the family of the child alleged to have been abused or neglected and give each a written explanation of the family assessment procedure, verbally explain

the procedure, and assess the service needs of the family. The purpose of the family assessment is to ensure the safety of the child identified in the report and, if appropriate, to provide services that deter future child abuse and neglect. The family assessment and identification of service needs shall be based on information gathered from the family and other sources. The family assessment shall be completed within forty-five days of receipt of the report. However, upon written justification by the local department, the family assessment may be extended up to a total of sixty days.

The family assessment shall be in writing and shall be completed in accordance with State Board regulation. Upon completion of the family assessment, the department shall consult with the family about services to address the family's needs.

E. Families have the option of declining the services offered as a result of the family assessment. If the family declines the services, the case shall be closed unless the local department determines that sufficient cause exists to redetermine the case as one that needs to be investigated. In no instance shall a case be redetermined as an investigation solely because the family declines services. The local department shall commence an immediate investigation if, at any time during the family assessment and services approach, it determines that an investigation is required. Such an investigation shall be completed within forty-five days of the date that it is determined that an investigation is required.

F. Reports that are not investigated shall not be determined founded or unfounded and shall not be entered into the central registry. Reports that are investigated shall be determined founded or unfounded, and founded reports shall be entered into the central registry in accordance with the provisions of this chapter. The subject of the report shall have access to his own record in the central registry.

G. All child abuse and neglect reports and the department's subsequent involvement with the case shall be recorded. The record, which shall be separate from the central registry, shall be accessible only to the Department and to local departments for child protective services. The subject of the report is the person who is alleged to have committed abuse or neglect. The subject of the report shall have access to his own record. Records of reports not investigated shall be purged three years after the date of the report if there are no subsequent reports regarding the same child or the person who is the subject of the report in that three years. The department shall retain such records for an additional period of up to two years if requested in writing by the person who is the subject of such complaint or report.

H. The Department shall develop a training program for all staff persons involved in child protective services in the pilot programs, and all such staff shall receive this training.

I. The Department shall evaluate and report on the impact and effectiveness of the multiple response system in meeting the purposes of the system. The evaluation shall include, but is not limited to, the following information: turnover rate of child protective services workers, changes in the number of investigations, the number of families receiving services, the number of families rejecting services, the effectiveness of the initial assessment in determining the appropriate level of intervention, the impact on out-of-home placements, the cost effectiveness of the system, the availability of needed services, community cooperation, successes and problems encountered, the overall operation of the multiple response system and recommendations for improvement. The Department shall submit a preliminary report to the House Committee on Health, Welfare and Institutions and the Senate Committee on Rehabilitation and Social Services by December 15, 1997, and subsequent annual reports by December 15, 1998, and by December 15, 1999.

2. That this act shall become effective only if state funds are provided to carry out the provisions of this section by the 1996 General Assembly.

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 836

An Act to amend the Code of Virginia by adding a section numbered 63.1-248.5:1.01, relating to false reports of child abuse and neglect; penalties.

[H 37]

Approved April 8, 1996

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 63.1-248.5:1.01 as follows:

§ 63.1-248.5:1.01. Knowingly making false reports; penalties.

A. Any person fourteen years of age or older who makes or causes to be made a report of child abuse or neglect pursuant to this chapter which he knows to be false shall be guilty of a Class 4 misdemeanor. Any person fourteen years of age or older who has been previously convicted under this subsection and who is subsequently convicted of making a false report of child abuse or neglect under this subsection shall be guilty of a Class 2 misdemeanor.

B. The child protective services records regarding the person who was alleged to have committed abuse or neglect which result from a report for which a conviction is obtained under this section shall be purged immediately by any custodian of such records upon presentation to the custodian of a certified copy of such conviction. After purging the records, the custodian shall notify the person in writing that such records have been purged.

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 813

An Act to amend the Code of Virginia by adding a section numbered 63.1-248.5:1.01, relating to false reports of child abuse and neglect; penalties.

[S 10]

Approved April 8, 1996

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 63.1-248.5:1.01 as follows:

§ 63.1-248.5:1.01. Knowingly making false reports; penalties.

A. Any person fourteen years of age or older who makes or causes to be made a report of child abuse or neglect pursuant to this chapter which he knows to be false shall be guilty of a Class 4 misdemeanor. Any person fourteen years of age or older who has been previously convicted under this subsection and who is subsequently convicted of making a false report of child abuse or neglect under this subsection shall be guilty of a Class 2 misdemeanor.

B. The child protective services records regarding the person who was alleged to have committed abuse or neglect which result from a report for which a conviction is obtained under this section shall be purged immediately by any custodian of such records upon presentation to the custodian of a certified copy of such conviction. After purging the records, the custodian shall notify the person in writing that such records have been purged.

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 780

An Act to amend and reenact § 63.1-248.5:1 of the Code of Virginia, as it is currently effective and as it may become effective, relating to child protective services records.

[S 11]

Approved April 6, 1996

Be it enacted by the General Assembly of Virginia:

1. That § 63.1-248.5:1 of the Code of Virginia, as it is currently effective and as it may become effective, is amended and reenacted as follows:

§ 63.1-248.5:1. Retention of records in unfounded cases; procedures regarding unfounded reports alleged to be made in bad faith or with malicious intent.

A. The local department shall retain the records of any investigation of a report or complaint which is made pursuant to this chapter and which it determines to be unfounded ~~for thirty days from the date the person who is the subject of the report or complaint is notified of such determination in a record which is separate from the central registry and accessible only to the Department and to local departments for child protective services.~~ The purpose of retaining unfounded complaints is to provide local departments with information regarding prior investigations. In no event shall the mere existence of a prior complaint be used to determine that a subsequent complaint is founded. The subject of the report is the person who is alleged to have committed abuse or neglect. The subject of the report shall have access to his own record. The record of the unfounded case shall be purged one year after the date of the report if there are no subsequent founded or unfounded reports regarding the same child or the person who is the subject of the report in that one year. The department shall retain the records for an additional period of up to two years if requested in writing by the person who is the subject of such complaint or report. *The child protective services records regarding the petitioner which result from such report shall be purged immediately by any custodian of such records upon presentation to the custodian of a certified copy of a court order that there has been a civil action which determined that the report was made in bad faith or with malicious intent. After purging the records, the custodian shall notify the petitioner in writing that the records have been purged.*

B. At the time the Department notifies a person who is the subject of a complaint or report made pursuant to this chapter that such complaint or report is unfounded, it shall notify him *that the record will be retained for one year and* of the availability of the procedures set out in this section regarding reports or complaints alleged to be made in bad faith or with malicious intent.

C. Any person who is the subject of an unfounded report or complaint made pursuant to this chapter who believes that such report or complaint was made in bad faith or with malicious intent may petition the circuit court in the jurisdiction in which the report or complaint was made for the release to such person of the records of the investigation. Such petition shall specifically set forth the reasons such person believes that such report or complaint was made in bad faith or with malicious intent. Upon the filing of such petition, the court shall request and the department shall provide to the court its records of the investigation for the court's in camera review. The petitioner shall be entitled to present evidence to support his petition. If the court determines that there is a reasonable question of fact as to whether the report or complaint was made in bad faith or with malicious intent and that disclosure of the identity of the complainant would not be likely to endanger the life or safety of the complainant, it shall provide to the petitioner a copy of the records of the investigation. The original records shall be subject to discovery in any subsequent civil action regarding the making of a complaint or report in bad faith or with malicious intent.

§ 63.1-248.5:1. (Delayed effective date) Retention of records in unfounded cases; procedures regarding unfounded reports alleged to be made in bad faith or with malicious intent.

A. The local department shall retain the records of any investigation of a report or complaint which is made pursuant to this chapter and which it determines to be unfounded ~~for thirty days from the date the person who is the subject of the report or complaint is notified of such determination in a record which is separate from the central registry and accessible only to the Department and to~~

local departments for child protective services. The purpose of retaining unfounded complaints is to provide local departments with information regarding prior investigations. In no event shall the mere existence of a prior complaint be used to determine that a subsequent complaint is founded. The subject of the report is the person who is alleged to have committed abuse or neglect. The subject of the report shall have access to his own record. The record of the unfounded case shall be purged one year after the date of the report if there are no subsequent founded or unfounded reports regarding the same child or the person who is the subject of the report in that one year. The department shall retain the records for an additional period of up to two years if requested in writing by the person who is the subject of such complaint or report.

B. At the time the Department notifies a person who is the subject of a complaint or report made pursuant to this chapter that such complaint or report is unfounded, it shall notify him *that the record will be retained for one year and* of the availability of the procedures set out in this section regarding reports or complaints alleged to be made in bad faith or with malicious intent.

C. Any person who is the subject of an unfounded report or complaint made pursuant to this chapter who believes that such report or complaint was made in bad faith or with malicious intent may petition the family court in the jurisdiction in which the report or complaint was made for the release to such person of the records of the investigation. Such petition shall specifically set forth the reasons such person believes that such report or complaint was made in bad faith or with malicious intent. Upon the filing of such petition, the court shall request and the department shall provide to the court its records of the investigation for the court's in camera review. The petitioner shall be entitled to present evidence to support his petition. If the court determines that there is a reasonable question of fact as to whether the report or complaint was made in bad faith or with malicious intent and that disclosure of the identity of the complainant would not be likely to endanger the life or safety of the complainant, it shall provide to the petitioner a copy of the records of the investigation. The original records shall be subject to discovery in any subsequent civil action regarding the making of a complaint or report in bad faith or with malicious intent. *The child protective services records regarding the petitioner which result from such report shall be purged immediately by any custodian of such records upon presentation to the custodian of a certified copy of a court order that there has been a civil action which determined that the report was made in bad faith or with malicious intent. After purging the records, the custodian shall notify the petitioner in writing that the records have been purged.*

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 852

An Act to amend the Code of Virginia by adding in Chapter 12.1 of Title 63.1 a section numbered 63.1-248.18, establishing a child protective services multiple response system.

[S 12]

Approved April 9, 1996

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 12.1 of Title 63.1 a section numbered 63.1-248.18 as follows:

§ 63.1-248.18. Establishment of pilot multiple response system.

A. By March 1, 1997, the Department shall establish a multiple response child protective services system in at least three but no more than five areas of the state selected by the Department. Areas may be composed of any combination of one or more counties or cities or both counties and cities. The multiple response system is designed to protect children at risk by effective use of available community resources. When appropriate, families will be offered services through the local department or through community agencies to promote safe, positive relationships within families by emphasizing prevention and assistance; or when otherwise appropriate, local departments will investigate, in conjunction with law-enforcement agencies pursuant to memoranda of understanding, allegations of child abuse or neglect for appropriate intervention or follow up action. The Department shall develop criteria for the selection of pilot areas which shall include an assessment of the effectiveness of the area's plan for community involvement in child protective services and a determination of whether local departments in the area have effective agreements with law-enforcement agencies and the attorney for the Commonwealth ensuring interagency cooperation.

By November 1, 1996, the Department shall submit to the House Committee on Health, Welfare and Institutions and the Senate Committee on Rehabilitation and Social Services a report outlining the plan for the multiple response system, including copies of any requests for proposals and the criteria developed for selection of pilot areas.

The pilot programs shall be subject to the provisions of this chapter, State Board regulations and Department policies except to the extent that such regulations and policies are inconsistent with the provisions of this section.

The State Board shall promulgate regulations to implement the provisions of this section to be effective within 280 days of July 1, 1996.

B. Upon receipt of a report of child abuse or neglect, the local department, after making an initial assessment shall determine whether the appropriate level of intervention is (i) investigation, (ii) family assessment and services or (iii) referral by the local department for services even though the report does not meet the definition of abuse or neglect. The Department shall develop an assessment instrument which shall be used to determine the appropriate level of intervention. A report may be reclassified at any time during the local department's involvement with the case.

C. The local department may investigate any report of child abuse or neglect but the following reports of child abuse or neglect shall be investigated regardless of the outcome of the assessment: (i) sexual abuse, (ii) child fatality, (iii) abuse or neglect resulting in serious injury as defined in § 18.2-371.1, (iv) child has been taken into the custody of the local department of social services, or (v) cases involving a caretaker at a state licensed child day center, religiously exempt child day center, regulated family day home, private or public school, or hospital or any institution.

D. Cases determined to be appropriate for investigation shall be investigated in accordance with the provisions of this chapter. Investigations shall be completed within forty-five days of receipt of the report. However, upon written justification by the local department, such investigation may be extended up to a total of sixty days. Upon completion of the investigation, the department shall consult with the child's family about services to address the family's needs.

In cases determined to be appropriate for family assessment, the local department shall immediately contact the subject of the report and the family of the child alleged to have been abused or neglected and give each a written explanation of the family assessment procedure, verbally explain

the procedure, and assess the service needs of the family. The purpose of the family assessment is to ensure the safety of the child identified in the report and, if appropriate, to provide services that deter future child abuse and neglect. The family assessment and identification of service needs shall be based on information gathered from the family and other sources. The family assessment shall be completed within forty-five days of receipt of the report. However, upon written justification by the local department, the family assessment may be extended up to a total of sixty days.

The family assessment shall be in writing and shall be completed in accordance with State Board regulation. Upon completion of the family assessment, the department shall consult with the family about services to address the family's needs.

E. Families have the option of declining the services offered as a result of the family assessment. If the family declines the services, the case shall be closed unless the local department determines that sufficient cause exists to redetermine the case as one that needs to be investigated. In no instance shall a case be redetermined as an investigation solely because the family declines services. The local department shall commence an immediate investigation if, at any time during the family assessment and services approach, it determines that an investigation is required. Such an investigation shall be completed within forty-five days of the date that it is determined that an investigation is required.

F. Reports that are not investigated shall not be determined founded or unfounded and shall not be entered into the central registry. Reports that are investigated shall be determined founded or unfounded, and founded reports shall be entered into the central registry in accordance with the provisions of this chapter. The subject of the report shall have access to his own record in the central registry.

G. All child abuse and neglect reports and the department's subsequent involvement with the case shall be recorded. The record, which shall be separate from the central registry, shall be accessible only to the Department and to local departments for child protective services. The subject of the report is the person who is alleged to have committed abuse or neglect. The subject of the report shall have access to his own record. Records of reports not investigated shall be purged three years after the date of the report if there are no subsequent reports regarding the same child or the person who is the subject of the report in that three years. The department shall retain such records for an additional period of up to two years if requested in writing by the person who is the subject of such complaint or report.

H. The Department shall develop a training program for all staff persons involved in child protective services in the pilot programs, and all such staff shall receive this training.

1. The Department shall evaluate and report on the impact and effectiveness of the multiple response system in meeting the purposes of the system. The evaluation shall include, but is not limited to, the following information: turnover rate of child protective services workers, changes in the number of investigations, the number of families receiving services, the number of families rejecting services, the effectiveness of the initial assessment in determining the appropriate level of intervention, the impact on out-of-home placements, the cost effectiveness of the system, the availability of needed services, community cooperation, successes and problems encountered, the overall operation of the multiple response system and recommendations for improvement. The Department shall submit a preliminary report to the House Committee on Health, Welfare and Institutions and the Senate Committee on Rehabilitation and Social Services by December 15, 1997, and subsequent annual reports by December 15, 1998, and by December 15, 1999.

2. That this act shall become effective only if state funds are provided to carry out the provisions of this section by the 1996 General Assembly.

GENERAL ASSEMBLY OF VIRGINIA -- 1996 SESSION

HOUSE JOINT RESOLUTION NO. 11

Continuing the Joint Subcommittee Studying the Child Protective Services System in the Commonwealth.

Agreed to by the House of Delegates, February 8, 1996

Agreed to by the Senate, February 29, 1996

WHEREAS, the child protective services system was established by the General Assembly in 1975; and

WHEREAS, the General Assembly established the child protective services system for the purpose of identifying children who are being abused or neglected, of assuring that protective services will be made available to an abused or neglected child in order to protect such child and his siblings and to prevent further abuse or neglect, and of preserving the family life of the parents and children, where possible, by enhancing parental capacity for adequate child care; and

WHEREAS, the Child Protective Services Unit within the Department of Social Services provides guidance and technical assistance to the local departments of social services who are charged with investigating reports of alleged child abuse or neglect; and

WHEREAS, pursuant to regulations promulgated by the Board of Social Services, local departments of social services determine whether a case of child abuse or neglect is classified as unfounded or founded and in founded cases the name of the alleged perpetrator is entered into the central registry; and

WHEREAS, a person who is found to have committed child abuse or neglect may appeal the finding of the local department, first to the local department and then to a hearing officer employed by the Department of Social Services and if still aggrieved, may appeal to the circuit court whose role is limited to a review of the record; and

WHEREAS, the Joint Subcommittee Studying the Child Protective Services System was established by House Joint Resolution No. 502 during the 1995 General Assembly Session; and

WHEREAS, the joint subcommittee thoroughly examined the issues assigned to it and determined that excessive resources are devoted to investigating reported cases of child abuse and neglect and determining whether a case of child abuse or neglect is founded or unfounded against an alleged perpetrator; and

WHEREAS, because resources for child protective services are very limited, the current requirement that all reports receive a full investigation can result in insufficient emphasis on providing services to families; and

WHEREAS, the joint subcommittee found that the child protective services problems experienced by the Commonwealth are being experienced by other states throughout the nation; and

WHEREAS, a handful of other states, including Florida, Missouri, South Dakota, and West Virginia have established multiple response child protective services systems but none have been operational long enough to be evaluated; and

WHEREAS, the joint subcommittee has filed legislation creating a pilot child protective services multiple response system which will allow local departments of social services to respond to reports of child abuse and neglect based on the characteristics of the individual case; and

WHEREAS, the establishment and operation of the three-year pilot program should be monitored by the joint subcommittee; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Joint Subcommittee Studying the Child Protective Services System be continued to monitor the implementation and operation of the pilot multiple response system and to monitor the recommendations that it has made concerning (i) the adequacy of training received by child protective services caseworkers, (ii) the categories of complaint dispositions, (iii) access to and use of the central registry, (iv) the child protective services appeals process, (v) proper procedures for editing investigative reports given to appellants, (vi) the rights of appellants to present supporting witnesses and documents and (vii) the implementation of recommendations of the Department of Social Services November 1994 study of the child protective services appeals process. The joint subcommittee shall be composed of seven members, three of whom shall be members of the House of Delegates to be appointed by the Speaker

of the House of Delegates; one of whom shall be a former member of the House of Delegates to be appointed by the Speaker of the House of Delegates; and three of whom shall be members of the Senate to be appointed by the Senate Committee on Privileges and Elections. The Department of Social Services, the Executive Secretary of the Supreme Court, and the Office of the Attorney General shall provide assistance to the joint subcommittee.

The direct costs of this study shall not exceed \$2,000.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1997 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

1 SENATE JOINT RESOLUTION NO. 8

2 *Continuing the Joint Subcommittee Studying the Child Protective Services System in the*
3 *Commonwealth.*

4 Agreed to by the Senate, February 13, 1996
5 Agreed to by the House of Delegates, February 29, 1996

6 WHEREAS, the child protective services system was established by the General Assembly in
7 1975; and

8 WHEREAS, the General Assembly established the child protective services system for the purpose
9 of identifying children who are being abused or neglected, of assuring that protective services will be
10 made available to an abused or neglected child in order to protect such child and his siblings and to
11 prevent further abuse or neglect, and of preserving the family life of the parents and children, where
12 possible, by enhancing parental capacity for adequate child care; and

13 WHEREAS, the Child Protective Services Unit within the State Department of Social Services
14 provides guidance and technical assistance to the local departments of social services who are charged
15 with investigating reports of alleged child abuse or neglect; and

16 WHEREAS, pursuant to regulations promulgated by the State Board of Social Services, local
17 departments of social services determine whether a case of child abuse or neglect is classified as
18 unfounded or founded and in founded cases the name of the alleged perpetrator is entered into the
19 central registry; and

20 WHEREAS, a person who is found to have committed child abuse or neglect may appeal the
21 finding of the local department, first to the local department and then to a hearing officer employed
22 by the State Department of Social Services and if still aggrieved, may appeal to the circuit court
23 whose role is limited to a review of the record; and

24 WHEREAS, the Joint Subcommittee Studying Child Protective Services was established by House
25 Joint Resolution No. 502 during the 1995 General Assembly Session; and

26 WHEREAS, the joint subcommittee thoroughly examined the issues assigned to it and determined
27 that excessive resources are devoted to investigating reported cases of child abuse and neglect and
28 determining whether a case of child abuse or neglect is founded or unfounded against an alleged
29 perpetrator; and

30 WHEREAS, because resources for child protective services are very limited, the current
31 requirement that all reports receive a full investigation can result in insufficient emphasis on providing
32 services to families; and

33 WHEREAS, the joint subcommittee found that the child protective services problems experienced
34 by the Commonwealth are being experienced by other states throughout the nation; and

35 WHEREAS, a handful of other states, including Florida, Missouri, South Dakota, and West
36 Virginia have established multiple response child protective services systems but none has been
37 operational long enough to be evaluated; and

38 WHEREAS, the joint subcommittee has filed legislation creating a pilot child protective services
39 multiple response system which will allow local departments of social services to respond to reports
40 of child abuse and neglect based on the characteristics of the individual case; and

41 WHEREAS, the establishment and operation of the three-year pilot program should be monitored
42 by the joint subcommittee; now, therefore, be it

43 RESOLVED by the Senate, the House of Delegates concurring, That the Joint Subcommittee
44 Studying the Child Protective Services System in the Commonwealth be continued to monitor the
45 implementation and operation of the pilot multiple response system and to monitor the
46 recommendations that it has made concerning (i) the adequacy of training received by child protective
47 services caseworkers, (ii) the categories of complaint dispositions, (iii) access to and use of the central
48 registry, (iv) the child protective services appeals process, (v) proper procedures for editing
49 investigative reports given to appellants, (vi) the rights of appellants to present supporting witnesses
50 and documents and (vii) the implementation of recommendations of the State Department of Social
51 Services November 1994 study of the child protective services appeals process. The joint
52 subcommittee shall be composed of seven members as follows: three members of the Senate to be
53 appointed by the Senate Committee on Privileges and Elections; and three members of the House of

1 Delegates and one former member of the House of Delegates to be appointed by the Speaker of the
2 House. The Department of Social Services, the Executive Secretary of the Supreme Court, and the
3 Office of the Attorney General shall provide assistance to the joint subcommittee.

4 The direct costs of this study shall not exceed \$2,000.

5 The joint subcommittee shall complete its work in time to submit its findings and
6 recommendations to the Governor and the 1997 Session of the General Assembly as provided in the
7 procedures of the Division of Legislative Automated Systems for the processing of legislative
8 documents.

9 Implementation of this resolution is subject to subsequent approval and certification by the Joint
10 Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of
11 the study.

