

**REPORT OF THE
VIRGINIA DEPARTMENT OF SOCIAL SERVICES**

**Final Report on Substance
Exposed Newborn Infants**

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



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**COMMONWEALTH OF VIRGINIA
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COMMONWEALTH of VIRGINIA

DEPARTMENT OF SOCIAL SERVICES

October 1, 2001

TO: The Honorable James S. Gilmore, III

and

The General Assembly of Virginia

The report contained herein is pursuant to Senate Bill 557 (1998) and House Bill 803 (1998). This legislation requires an attending physician to file a report with a local department of social services whenever a newborn infant evidences exposure to a non-prescription, controlled substance or has signs of fetal alcohol syndrome. This legislation also directs the Department of Social Services to submit a report on the implementation of the legislation in each of the three years following enactment. This is the report on the third year of implementation. Although the Department of Social Services was required to provide this report, it was jointly developed with representatives from the Department of Health; the State Board of Medicine; the Department of Mental Health, Mental Retardation and Substance Abuse Services; and the Office of the Executive Secretary of the Supreme Court of Virginia.

The report cost the Commonwealth an estimated \$13,175 to complete. Approximately 527 manhours were spent on completing this report. This includes staff time in five state agencies to compile and analyze the data and Department of Social Services staff time to write the report.

Respectfully Submitted,

A handwritten signature in cursive script that reads 'Sonia Rivero'.

Sonia Rivero
Commissioner

PREFACE

Section 63.1-248.3 of the *Code of Virginia* was amended in 1998 to require an attending physician to file a report with the local department of social services (local department) whenever a newborn infant evidences exposure to non-prescription, controlled substances or signs of fetal alcohol syndrome. When abuse or neglect is found, the local department's child protective services worker is required, by Section 63.1-248.6 of the *Code of Virginia*, to arrange for necessary protective and rehabilitative services for the child and family.

Section 32.1-127 was amended in 1998 to require hospitals to notify the local Community Services Boards (CSBs) of any substance-using, postpartum women so that the CSBs may provide emergency services, prevention, outpatient treatment, and management of the discharge plan.

Section 16.1-241.3 was also amended in 1998 to allow courts to enter orders to protect the health and welfare of children exposed to nonprescribed substances pending the results of necessary investigations.

The Virginia Department of Social Services was required to report to the Governor and the General Assembly on October 1, 1999 and annually for the following two years on the implementation of this legislative mandate. The first report is contained in House Document Number 9 (2000). The second report is contained in House Document Number 6 (2001). This third year implementation report includes data compiled in conjunction with the State Board of Medicine; the Department of Health; the Department of Mental Health, Mental Retardation and Substance Abuse Services; and the Office of the Executive Secretary of the Supreme Court of Virginia.

FINAL REPORT ON SUBSTANCE EXPOSED NEWBORN INFANTS

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EXECUTIVE SUMMARY

Senate Bill 557 (1998) and House Bill 803 (1998) amended Section 63.1-248.3 of the *Code of Virginia* to require an attending physician to file a report with the local department of social services (local department) when a newborn infant evidences exposure to non-prescription, controlled substances or signs of fetal alcohol syndrome. When abuse or neglect is found, the local department's child protective services worker is required, by Section 63.1-248.6, to arrange for necessary protective and rehabilitative services for the child and his family.

This 1998 legislation further required the Department of Social Services (Department) to report on the implementation of the legislation in each of the three years following enactment. This is the report on the third year of implementation. It includes information compiled in accordance with the requirements of the *Code of Virginia* and in conjunction with the Board of Medicine; the Department of Health; the Department of Mental Health, Mental Retardation and Substance Abuse Services; and the Office of the Executive Secretary of the Supreme Court of Virginia.

From July 1, 2000 through June 15, 2001, local departments received 306 reports from medical personnel alleging that an infant had in-utero exposure to an illicit substance or alcohol. Two hundred fifty-six of these reports met the legal definition of substance exposed newborns and were investigated by local departments. The Department randomly selected 50 of the 306 reports to review. This case review showed that of the 50 cases reviewed:

- Cocaine was the most commonly used drug.
- Mothers were long-term drug users.
- Mothers often had a history of involvement with child protective services programs and had other children placed with relatives.
- Substance exposed newborns often were born premature and had low birth weights with associated health and developmental risks.

The Department formed an interagency work group to assess implementation of this legislation. The conclusion of this group is that there must be continued state and local interagency collaborative planning and cross training between the Departments of Health; Social Services; and Mental Health, Mental Retardation and Substance Abuse Services on perinatal substance use and its effect on the health, development and safety of the child. Additionally, integration of child welfare services with substance abuse services, health care services, and Virginia Drug Courts is crucial.

FINAL REPORT ON SUBSTANCE EXPOSED NEWBORN INFANTS

INTRODUCTION

LEGISLATIVE MANDATE

Senate Bill 557 (1998) and House Bill 803 (1998) as enacted by the General Assembly require the Department of Social Services to report annually for three years on the implementation of amendments to the *Code of Virginia* regarding newborn infants who evidence exposure to non-prescription, controlled substances or signs of fetal alcohol syndrome. (See **Appendix I.**) Specifically, it states:

“That on or before October 1, 1999, and each year thereafter for the following two years, the Department of Social Services shall report to the General Assembly on the implementation of this Act. The report shall include data compiled in conjunction with the State Board of Medicine, the Department of Health, the Department of Mental Health, Mental Retardation and Substance Abuse Services and the Office of the Executive Secretary of the Supreme Court, on the numbers of mothers and infants affected, the number of reports made pursuant to subsection A1 of § 63.1-248.3 and investigations resulting therefrom, the outcome of those investigations, the number of petitions filed with the juvenile courts pursuant to 16.1-241.3 and the disposition on those petitions, the types of treatments and other services provided and such other information as representatives of those departments having expertise in perinatal addiction or abuse and neglect cases deem appropriate to a thorough evaluation of this act. For purposes of preparing this report, the departments and offices shall establish procedures which are necessary and appropriate to track cases involving suspected addiction of newborn infants during the period to be covered by the report.”

LEGISLATIVE HISTORY

1991/1992 TASK FORCE

In 1991, the General Assembly requested the Secretary of Health and Human Resources and the Secretary of Education to convene a task force to study the impact of perinatal substance use. The task force was to recommend interdisciplinary approaches to prevention, early intervention, and treatment services for drug exposed children and their families.

In 1992, the task force issued a report stating that:

- pregnant women who use alcohol and other drugs risk their infants' normal health and development;
- substance use could result in such adverse effects on the newborn as growth retardation, mental retardation, and developmental disorders; and
- substance use increases the risk of poor maternal-infant bonding.

The task force's report recommended a continuum of intervention and treatment, which included:

- designing a program to provide early identification of substance-abusing women and their children;
- linking these women and children with appropriate services;
- collecting information about the demographics of this population; and
- collecting information on the need for and cost of services.

Also emphasized in the task force's report was that, for pregnant, substance-using women, the threat of punitive action could be a serious deterrent to their seeking prenatal care. Women who thought they would be immediately reported to child welfare agencies might choose not to obtain medical care during their pregnancies.

1998 LEGISLATIVE ACTION

The General Assembly addressed the task force's recommendations when it enacted Senate Bill 557 (1998) and House Bill 803 (1998). These bills modified Sections 63.1-248.3, 32.1-127, and 16.1-241.3 of the *Code of Virginia*. This legislation requires attending physicians to file reports with local departments and hospitals to notify Community Services Boards whenever newborn infants show evidence of exposure to non-prescription, controlled substances or signs of fetal alcohol syndrome.

When abuse or neglect is found:

- The local department's child protective services worker arranges for necessary protective and rehabilitative services for the child and his family.

- The Community Services Board (CSB) provides emergency services, prevention, outpatient treatment, and management of the mother's discharge plan.
- The court may enter any order deemed necessary to protect the health and welfare of the child pending final disposition of the child protective services investigation to allow a local department's child protective services program to file a petition within 21 days of a substance exposed newborn's birth.

Together these amendments provide a mechanism for follow-up, early intervention, and coordinated treatment planning among health care providers, substance abuse services, and child protective services workers on behalf of postpartum substance-using mothers and their substance exposed newborns.

The Department convened a work group to address implementation issues. The work group was made up of representatives from the Departments of Health; Mental Health, Mental Retardation, and Substance Abuse Services; the Board of Medicine; and the Office of the Executive Secretary of the Supreme Court of Virginia. (See **Appendix II** for a list of the work group members.)

The charge of this work group was to collect data and assess third year implementation of the law. The information contained in this report came from the work of this group. The work group identified the need for:

- data collection on substance exposed infants and their mothers;
- state and local, interagency collaborative services planning between the Department; the Department of Health; and the Department of Mental Health, Mental Retardation, and Substance Abuse Services on behalf of postpartum, substance-using women and their children;
- specialized training for local department child protective services workers and interdisciplinary training for professionals working with perinatal substance use; and
- interagency protocols/agreements between local departments, Community Services Boards, and hospitals to improve collaborative working relationships and permit information sharing in accordance with federal substance abuse and child protective services confidentiality regulations.

SUBSTANCE ABUSE REPORTING and PROTECTIVE AND REHABILITATIVE SERVICES DATA

As directed by the 1998 General Assembly, the State Board of Medicine; Department of Social Services; Department of Health; Department of Mental Health, Mental Retardation, and Substance Abuse Services; and the Office of the Executive Secretary of the Supreme Court each contributed information compiled on reports of substance exposed newborns.

REPORTS TO LOCAL DEPARTMENTS OF SOCIAL SERVICES CHILD PROTECTIVE SERVICES PROGRAM

Fifty-four local departments received 306 reports from physicians, nurses, and hospital social workers concerning substance exposed infants from July 1, 2000 through June 15, 2001. (**Appendix III** shows the number of reports by locality.) The reports were screened to ensure that they were substance exposed newborn reports as defined in the *Code of Virginia*. There were 256 statewide reports that met the legal definition of substance exposed newborns and were investigated by local departments. These 256 reports resulted in:

- 20 investigations with founded dispositions;
- 141 investigations with unfounded dispositions;
- 79 investigations pending as of June 15, 2001;
- three family assessments with no dispositions because they were conducted by local departments piloting the Child Protective Services Differential Response System where a disposition is not required;
- 10 incomplete investigations due to the missing status of the child or family; and
- three duplicative data entry errors.

There were:

- 17 emergency removals of children from their mothers; and
- two invalid reports since the mother was in treatment or the drugs found in the infant were as a result of prescription drug use by the mother.

SAMPLE REVIEW OF REPORTS BY THE DEPARTMENT

In order to learn more about the 306 reported cases, the Department reviewed 50 randomly selected reports (16 percent) from the Department's Online Automated Services Information System (OASIS). Of the 50 reports reviewed by the Department, seven were eliminated due to miscoding as they were not substance exposed infants reports. Of the remaining 43 reports, there were:

- six reports screened out because they did not meet the *Code* definition of substance exposed newborns;
- one report on a missing child and family; and
- 36 reports that met the legal definition of substance exposed newborns and were investigated by local departments.

The 36 reports investigated by local departments resulted in:

- one investigation with a founded disposition;
- 30 investigations with unfounded dispositions;
- three investigations pending; and
- two family assessments with no dispositions because they were conducted by local departments piloting the Child Protective Services Differential Response System where a disposition is not required.

Of the 43-case sample involving 43 mothers and 45 infants, including two sets of twins, hospitals reported the following positive drug test results:

Substance*	# Infants	# Mothers
Cocaine	24	22
Opiates	3	5
Marijuana	15	19
Barbiturates	3	2
Heroin	2	4
Alcohol	1	4
Amphetamines	1	1

*While most mothers and infants tested positive for one drug, 18 percent of infants and 36 percent of mothers were exposed to multiple substances.

Of the 43-case sample, local departments' child protective services staff:

- initiated four protective court actions including:
 - two emergency removal orders
 - two preliminary protective orders
- made one referral for private adoption
- made two foster care placements
- made two placements with relatives.

The perinatal, substance-using mothers in the case sample tended to be long-term drug users, with an average age of 29 years. They often had correlated financial, housing, legal, and other problems. These environmental factors present additional risks for the substance exposed newborns. Of these mothers, when information was provided:

- 23 were unmarried;
- 21 were unemployed;
- 16 had prior involvement with local departments' child protective services programs;
- 36 were receiving Temporary Assistance for Needy Families (TANF) services from local departments;
- 10 had other children in placement due to maternal substance abuse (16 of these children were in the care of relatives and two were in the care of friends);
- six gave birth to a total of 15 other children who were also born substance exposed;
- six had disabilities; and
- eight lived in temporary arrangements.

Prenatal drug and alcohol exposure can result in obstetrical complications including premature infant birth and low birth weight. Infant low birth weight increases infant mortality risks and is a predictor of later developmental outcomes including disabilities, hyperactivity, and other chronic health conditions.

Of the substance exposed infants in the case sample:

- three died;
- 15 were born premature;
- 10 had low birth weights (under 5 lbs. 8 oz.);
- three had withdrawal symptoms; and
- 18 of the living infants received post-hospital well baby health care checkups.

Infants exposed to cocaine were the most susceptible to premature birth and low birth weights. Of the 24 cocaine exposed infants:

- 11 were premature births; and
- eight had low birth weights (under 5 lbs. 8 oz.)

REFERRALS TO COMMUNITY SERVICES BOARDS

The Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) surveyed the 40 Community Services Boards to determine how many postpartum, substance-using women were referred for services. The survey revealed that 278 women were referred to CSBs by hospitals during the period July 1, 2000 to March 31, 2001. Drug tests were positive for the following substances:

<u>Substance*</u>	<u># Infants</u>	<u># Mothers</u>
Cocaine	118	114
Opiates	26	28
Marijuana	50	95
Alcohol**	8	8
Other	8	18
Not tested/ test results unavailable	66	47

*43 mothers and 28 infants tested positive for multiple substances.

**Alcohol is metabolized and excreted within hours and is difficult to detect through drug testing unless the woman drank within several hours of delivery or consumed significant amounts of alcohol.

Community Services Boards provided the following services for the 278 mothers:

Clinical Service	Number of Women Seen
Initial Screening	162
Intake	119
Case Management	141
Outpatient Therapy	36
Intensive Outpatient Therapy	17
Partial Day Hospital	14
Methadone Maintenance	1
High Intensive Residential	4
Intensive Residential	10

The two primary difficulties Community Services Boards (CSBs) continue to have in working with substance-using mothers are locating and engaging them in treatment. During the last year, many CSBs made concerted efforts to contact postpartum women before they were discharged from the hospital; however, due to short hospital stays (24-48 hours) and CSBs staffing patterns, in-hospital contact was not always possible. Fifty-eight percent of the women referred to CSBs for substance abuse assessment obtained a screening for possible substance abuse services.

COURT PETITIONS FILED WITH THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS

To determine the number of petitions filed with juvenile and domestic relations district courts pursuant to Section 16.1-241.3 of the *Code of Virginia*, the Office of the Executive Secretary, Supreme Court of Virginia, conducted an analysis of cases filed with juvenile courts across the Commonwealth. This analysis covered the period of April 1, 2000 through March 31, 2001 for cases entered into the Court Automated Information System (CAIS). One petition was filed pursuant to Section 16.1-241.3 and involved an infant born with cocaine/heroin indicators.

Numerous child protection petitions are filed in the juvenile courts under other sections of the *Code of Virginia*, such as 16.1-251 (emergency removal order for children) and 16.1-253 (preliminary protective order for children). It is not possible to identify from CAIS whether any of these petitions involved infants who were drug or alcohol exposed at birth. CAIS shows the statutory authority for filing a petition, but it does not show why a petition is filed.

The fact that CAIS showed only one protective order entered due to a petition filed pursuant to Section 16.1-241.3 may mean that local departments or their attorneys are filing for protection under other more familiar provisions of the law. As the information reported by the local departments shows, petitions for

emergency removal orders and preliminary protective orders for substance-exposed newborns are being filed with the courts.

DEPARTMENT OF HEALTH DATA COLLECTION

State law requires the Department of Health to gather general statistical data on the birth certificate application about the mother's tobacco, drug, and alcohol use. The mother gives this information voluntarily. The information given by the mother is used to gather aggregate statistical data only. It is not used to track individual mothers or infants.

From the information given voluntarily by mothers on the birth certificate applications, the Department of Health reported the following substance use for the period July 2000 to March 2001.

Total births	71,226
Mothers reported tobacco use	5,992*
Mothers reported drug use	413
Mothers reported alcohol use	410*

*Research indicates that alcohol and tobacco have the most harmful effects of all substances on the developing fetus including growth deficiencies, increased risk of Sudden Infant Death Syndrome, and alcohol related, neurodevelopmental deficits including mental retardation and childhood hyperactivity.¹

There are variances between the number of mothers who report substance use during pregnancy and the number of substance exposed infant births reported by physicians because substance use information is requested from the mother at the time of the birth certificate application by persons not necessarily trained to inquire or assess substance use in pregnancy. The mother may have used a substance at any time during the pregnancy, but if the substance use was not recent, it may not be reported. The Department of Health, therefore, cautions against drawing conclusions or making recommendations based on the statistics they gather.

¹Britt, G.C., Ingersoll, K.S., and Schnoll, S.H. (1999). Developmental Consequences of Early Exposure to Alcohol and Other Drugs, in Sourcebook on Substance Abuse, Vol. 1, Epidemiology Development, Etiology, and Evaluation.

THIRD YEAR IMPLEMENTATION

DEPARTMENT OF SOCIAL SERVICES

The Department, in conjunction with the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) and Department of Health presented the 2001 Report to the General Assembly on Substance Exposed Newborns to 226 interdisciplinary professionals in 11 audiences including: the seven regional Virginia Perinatal Councils; hospitals; the Department of Medical Assistance Services, Managed Care Advisory Committee; the Governor's Advisory Board on Child Abuse and Neglect; and the *Commonwealth Partnership for Women and Children Affected by Substance Use*.

The Department of Social Services continued a training contract with the Virginia Institute for Social Services Training Activities at Virginia Commonwealth University to provide competency-based courses for local social workers. Three courses are specific to substance abuse and include one-day sessions on recognizing substance abuse; strategies for change with substance abusing caregivers focusing on the effects of alcohol and drugs on parenting; and substance affected/involved children.

In addition, the Department issued a technical assistance guide for local child protective services workers on documenting child protective services reports, in accordance with policy requirements in the Department's automated case management system. This guide was designed to enhance child protective services data accuracy including reports on substance exposed newborns.

The Department of Social Services provided federal Temporary Assistance for Needy Families (TANF) funds for 15 substance abuse and mental health community initiatives involving 40 agencies working with public assistance recipients. Although these initiatives are designed to address substance abuse and mental health areas as they affect employment readiness, children in the home indirectly benefit through services provided to their parents.

BOARD OF MEDICINE

The Board of Medicine participated with the Departments of Social Services, Health, and Mental Health, Mental Retardation and Substance Abuse Services in identifying health care provider perinatal substance abuse training and information needs.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION, AND SUBSTANCE ABUSE SERVICES

The Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) worked closely over the past year with the

Departments of Health and Social Services to identify and address service barriers and needed collaborative planning on behalf of substance exposed newborns and their mothers.

In an effort to address legal uncertainties concerning information sharing between agencies responsible for working with these families, DMHMRSAS, in conjunction with the federal Center for Substance Abuse Treatment and the Virginia Department of Health, sponsored two regional multi-disciplinary conferences on the interface between federal substance abuse and child protective services confidentiality regulations. The training sessions were conducted by the Legal Action Center located in New York. One hundred eighty professionals representing child protective services, Community Service Boards, hospitals, and other health care providers participated.

DMHMRSAS also sponsored a two-day "Women's Track" at the Virginia Association of Drug and Alcohol Programs Annual Conference that addressed gender specific services and perinatal substance use.

DMHMRSAS sent an interdisciplinary team to a national conference on the interface between substance abuse services and child welfare services, co-sponsored by the federal Center for Substance Abuse Treatment and the federal Administration on Children, Youth, and Families. The Virginia team consisted of representatives from the Office of Substance Abuse Services at DMHMRSAS; Project Link (a treatment project for pregnant, substance-using women and their children); Temporary Assistance for Needy Families Program; child protective services; foster care; and the Office of the Executive Secretary of the Supreme Court representing drug courts. The purpose of the conference was to identify critical service and policy coordination needs and begin inter-disciplinary, strategic planning on behalf of families affected by parental substance abuse who are also known to the child welfare system.

Virginia has 40 Community Services Boards (CSBs) that are responsible for providing substance abuse prevention and out-patient treatment services. Between July 1, 2000 and March 31, 2001, staff at 21 CSBs made presentations on perinatal substance use and related reporting requirements to area hospitals and local departments. Ten CSBs met with private physicians in their communities to address early identification of perinatal substance use. During this same period, five CSBs developed protocols with local social services departments on the interdisciplinary management of perinatal substance use, increasing the number of interagency protocols with local departments to 26. Seven CSBs developed similar protocols with hospitals, increasing the number of interagency hospital protocols to 24.

Pregnant substance-using women are a priority population for the CSBs. The CSBs continue to develop services to meet the needs of the women they serve. In 2000, 20 CSBs requested and received increased funding for treatment service enhancement for substance-using women.

The *Commonwealth Partnership for Women and Children Affected by Substance Abuse* continued to serve in an advisory capacity to DMHMRSAS' Office of Substance Abuse Services. This interdisciplinary consortium of service providers works to promote interagency and intrasystem linkages, education, and training opportunities and to identify issues and needs related to women and children affected by substance use.

DMHMRSAS added two new projects for substance-using pregnant, postpartum, and at risk women. The two new *Enhanced Project Links* are collaborative initiatives between multiple CSBs. They serve northern and southwest Virginia. *The Enhanced Project Link* sites provide community based, intensive case management services and select substance abuse treatment services through community service provider partnerships.

The Department of Mental Health, Mental Retardation, and Substance Abuse Services identified additional funds for the Fetal Alcohol Syndrome (FAS) Initiative which will enable the project to expand media and educational services beyond its original design and provide education and training on the dangers of alcohol use during pregnancy to service providers throughout Virginia. A website and hotline will also be available to the public.

DEPARTMENT OF HEALTH

The Virginia Department of Health, in collaboration with representatives from the Department of Social Services and Department of Mental Health, Mental Retardation, and Substance Abuse Services, has contracted with a health care provider to develop a perinatal substance use curriculum to be used in multiple educational formats with multi-disciplinary groups. The curriculum targets physicians and nurses who provide direct care to women admitted to hospitals for delivery. The curriculum contains information on the impact of perinatal substance use on the woman and her unborn child; techniques for effective substance use assessment in the perinatal population; responsibilities of health care providers under Virginia law; and availability of appropriate resources for treatment and follow-up. The seven regional Perinatal Councils are contracting with the Virginia Department of Health to conduct at least one training session in each region using this curriculum during 2001-2002. Funding will be sought from multiple sources so the curriculum can be implemented in all localities of the Commonwealth.

OFFICE OF THE EXECUTIVE SECRETARY SUPREME COURT OF VIRGINIA

The Office of the Executive Secretary of the Supreme Court sponsored a training conference on "Family Violence and the Law" for all circuit court judges in the Commonwealth. Ninety-three judges attended the two-day voluntary training event which included a review of civil laws related to family violence and protective orders including those authorized under Section 16.1-241.3 of the *Code of Virginia*.

SUMMARY

Amendments to Sections 63.1-248.3 and 32.1-127 of the *Code of Virginia* impact multiple systems including health care, social services, and substance abuse treatment services. The amendments provide a legislative framework for interagency services follow-up, early intervention, and coordinated treatment planning on behalf of postpartum substance-using women and their substance exposed newborns. This is the final report on the implementation of the amendments.

APPENDIX I

CHAPTER 716

An Act to amend and reenact §§ 63.1-248.3 and 63.1-248.6 of the Code of Virginia, as they are currently effective and as they may become effective, and to amend the Code of Virginia by adding a section numbered 16.1-241.3, relating to child protective services.

[H 803]

Approved April 16, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.1-248.3 and 63.1-248.6 of the Code of Virginia, as they are currently effective and as they may become effective, are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 16.1-241.3 as follows:

§ 16.1-241.3. *Newborn children; substance abuse.*

Upon the filing of a petition, within twenty-one days of a child's birth, alleging that an investigation has been commenced in response to a report of suspected abuse or neglect of the child based upon a factor specified in subsection A1 of § 63.1-248.3, the court may enter any order authorized pursuant to this chapter which the court deems necessary to protect the health and welfare of the child pending final disposition of the investigation pursuant to Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1 or other proceedings brought pursuant to this chapter. Such orders may include, but shall not be limited to, an emergency removal order pursuant to § 16.1-251, a preliminary protective order pursuant to § 16.1-253 or an order authorized pursuant to subdivisions 1 through 4 of subsection A of § 16.1-278.2. The fact that an order was entered pursuant to this section shall not be admissible as evidence in any criminal, civil or administrative proceeding other than a proceeding to enforce the order.

The order shall be effective for a limited duration not to exceed the period of time necessary to conclude the investigation and any proceedings initiated pursuant to Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1, but shall be a final order subject to appeal.

§ 63.1-248.3. Physicians, nurses, teachers, etc., to report certain injuries to children; penalty for failure to report.

A. The following persons who, in their professional or official capacity, have reason to suspect that a child is an abused or neglected child, shall report the matter immediately, except as hereinafter provided, to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred or to the Department of Social Services' toll-free child abuse and neglect hotline:

1. Any person licensed to practice medicine or any of the healing arts,
2. Any hospital resident or intern, and any person employed in the nursing profession,
3. Any person employed as a social worker,
4. Any probation officer,

5. Any teacher or other person employed in a public or private school, kindergarten or nursery school,
6. Any person providing full-time or part-time child care for pay on a regularly planned basis,
7. Any duly accredited Christian Science practitioner,
8. Any mental health professional,
9. Any law-enforcement officer,
10. Any mediator eligible to receive court referrals pursuant to § 8.01-576.8,
11. Any professional staff person, not previously enumerated, employed by a private or state-operated hospital, institution or facility to which children have been committed or where children have been placed for care and treatment, and
12. Any person associated with or employed by any private organization responsible for the care, custody or control of children.

If neither the locality in which the child resides or where the abuse or neglect is believed to have occurred is known, then such report shall be made to the local department of the county or city where the abuse or neglect was discovered or to the Department of Social Services' toll-free child abuse and neglect hotline.

If an employee of the local department is suspected of abusing or neglecting a child, the report shall be made to the juvenile and domestic relations district court of the county or city where the abuse or neglect was discovered. Upon receipt of such a report by the court, the judge of the juvenile and domestic relations district court shall assign the report to a local department of social services that is not the employer of the suspected employee for investigation; or, if the judge believes that no local department of social services within a reasonable geographic distance can be impartial in investigating the reported case, the judge shall assign the report to the court service unit of his court for investigation. The judge may consult with the State Department of Social Services in selecting a local department to conduct the investigation.

If the information is received by a teacher, staff member, resident, intern or nurse in the course of professional services in a hospital, school or similar institution, such person may, in place of said report, immediately notify the person in charge of the institution or department, or his designee, who shall make such report forthwith.

The initial report may be an oral report but such report shall be reduced to writing by the child abuse coordinator of the local department on a form prescribed by the State Board of Social Services. The person required to make the report shall disclose all information which is the basis for his suspicion of abuse or neglect of the child and, upon request, shall make available to the child-protective services coordinator and the local department investigating the reported case of child abuse or neglect any records or reports which document the basis for the report.

A1. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall include (i) a finding made by an attending physician within seven days of a child's birth that the results of a blood or urine test conducted within forty-eight hours

of the birth of the child indicate the presence of a controlled substance not prescribed for the mother by a physician, (ii) a finding by an attending physician made within forty-eight hours of a child's birth that the child was born dependent on a controlled substance which was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms, (iii) a diagnosis by an attending physician made within seven days of a child's birth that the child has an illness, disease or condition which, to a reasonable degree of medical certainty, is attributable to in utero exposure to a controlled substance which was not prescribed by a physician for the mother or the child, or (iv) a diagnosis by an attending physician made within seven days of a child's birth that the child has fetal alcohol syndrome attributable to in utero exposure to alcohol. When "reason to suspect" is based upon this subsection, such fact shall be included in the report along with the facts relied upon by the person making the report.

B. Any person required to file a report pursuant to ~~subsection A~~ of this section who fails to do so within seventy-two hours of his first suspicion of child abuse or neglect shall be fined not more than \$500 for the first failure and for any subsequent failures not less than \$100 nor more than \$1,000.

§ 63.1-248.3. (Delayed effective date) Physicians, nurses, teachers, etc., to report certain injuries to children; penalty for failure to report.

A. The following persons who, in their professional or official capacity, have reason to suspect that a child is an abused or neglected child, shall report the matter immediately, except as hereinafter provided, to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred or to the Department of Social Services' toll-free child abuse and neglect hotline:

1. Any person licensed to practice medicine or any of the healing arts,
2. Any hospital resident or intern, and any person employed in the nursing profession,
3. Any person employed as a social worker,
4. Any probation officer,
5. Any teacher or other person employed in a public or private school, kindergarten or nursery school,
6. Any person providing full-time or part-time child care for pay on a regularly planned basis,
7. Any duly accredited Christian Science practitioner,
8. Any mental health professional,
9. Any law-enforcement officer,
10. Any mediator eligible to receive court referrals pursuant to § 8.01-576.8,
11. Any professional staff person, not previously enumerated, employed by a private or state-operated hospital, institution or facility to which children have been committed or where children have been placed for care and treatment, and

12. Any person associated with or employed by any private organization responsible for the care, custody or control of children.

If neither the locality in which the child resides or where the abuse or neglect is believed to have occurred is known, then such report shall be made to the local department of the county or city where the abuse or neglect was discovered or to the Department of Social Services' toll-free child abuse and neglect hotline.

If an employee of the local department is suspected of abusing or neglecting a child, the report shall be made to the family court of the county or city where the abuse or neglect was discovered. Upon receipt of such a report by the court, the judge of the family court shall assign the report to a local department of social services that is not the employer of the suspected employee for investigation; or, if the judge believes that no local department of social services in a reasonable geographic distance can be impartial in investigating the reported case, the judge shall assign the report to the court service unit of his court for investigation. The judge may consult with the State Department of Social Services in selecting a local department to conduct the investigation.

If the information is received by a teacher, staff member, resident, intern or nurse in the course of professional services in a hospital, school or similar institution, such person may, in place of said report, immediately notify the person in charge of the institution or department, or his designee, who shall make such report forthwith.

The initial report may be an oral report but such report shall be reduced to writing by the child abuse coordinator of the local department on a form prescribed by the State Board of Social Services. The person required to make the report shall disclose all information which is the basis for his suspicion of abuse or neglect of the child and, upon request, shall make available to the child-protective services coordinator and the local department investigating the reported case of child abuse or neglect any records or reports which document the basis for the report.

A1. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall include (i) a finding made by an attending physician within seven days of a child's birth that the results of a blood or urine test conducted within forty-eight hours of the birth of the child indicate the presence of a controlled substance not prescribed for the mother by a physician, (ii) a finding by an attending physician made within forty-eight hours of a child's birth that the child was born dependent on a controlled substance which was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms, (iii) a diagnosis by an attending physician made within seven days of a child's birth that the child has an illness, disease or condition which, to a reasonable degree of medical certainty, is attributable to in utero exposure to a controlled substance which was not prescribed by a physician for the mother or the child, or (iv) a diagnosis by an attending physician made within seven days of a child's birth that the child has fetal alcohol syndrome attributable to in utero exposure to alcohol. When "reason to suspect" is based upon this subsection, such fact shall be included in the report, along with the facts relied upon by the person making the report.

B. Any person required to file a report pursuant to subsection A of this section who fails to do so within seventy-two hours of his first suspicion of child abuse or neglect shall be fined not more than \$500 for the first failure and for any subsequent failures not less than \$100 nor more than \$1,000.

§ 63.1-248.6. Local departments to establish child-protective services; duties.

A. Each local department shall establish child-protective services under a departmental coordinator within such department or with one or more adjacent local departments which shall be staffed with qualified personnel pursuant to regulations promulgated by the State Board of Social Services. The local department shall be the public agency responsible for receiving and investigating complaints and reports, except that (i) in cases where the reports or complaints are to be made to the juvenile and domestic relations district court and the judge determines that no local department of social services within a reasonable geographic distance can impartially investigate the report, the court shall be responsible for the investigation and (ii) in cases where an employee at a private or state-operated hospital, institution or other facility, or an employee of a school board is suspected of abusing or neglecting a child in such hospital, institution or other facility, or public school, the local department shall request the Department to assist in conducting the investigation in accordance with rules and regulations approved by the State Board.

B. The local department shall ensure, through its own personnel or through cooperative arrangements with other local agencies, that personnel who investigate reports or complaints that an employee of a private or state-operated hospital, institution or other facility, or an employee of a school board, abused or neglected a child in such hospital, institution or other facility, or public school, are qualified and assisted by the Department in accordance with State Board regulations.

C. The local department shall ensure, through its own personnel or through cooperative arrangements with other local agencies, the capability of receiving reports or complaints and responding to them promptly on a twenty-four-hours-a-day, seven-days-per-week basis.

D. The local department shall widely publicize a telephone number for receiving complaints and reports.

E. The local department shall upon receipt of a report or complaint:

1. Make immediate investigation *and, if the report or complaint was based upon one of the factors specified in subsection A1 of § 63.1-248.3, the department may file a petition pursuant to § 16.1-241.3;*

2. When investigation of a complaint reveals cause to suspect abuse or neglect, complete a report and transmit it forthwith to the central registry, *except that no such report shall be transmitted in cases in which the cause to suspect abuse or neglect is one of the factors specified in subsection A1 of § 63.1-248.3, if the mother sought substance abuse counseling or treatment prior to the child's birth;*

3. When abuse or neglect is found, arrange for necessary protective and rehabilitative services to be provided to the child and his family;

4. If removal of the child or his siblings from their home is deemed necessary, petition the court for such removal;

5. Report immediately to the attorney for the Commonwealth and the local law-enforcement agency and make available to them the records of the local department when abuse or neglect is suspected in any case involving (i) death of a child; (ii) injury or

threatened injury to the child in which a felony or Class 1 misdemeanor is also suspected; (iii) any sexual abuse, suspected sexual abuse or other sexual offense involving a child, including but not limited to the use or display of the child in sexually explicit visual material, as defined in § 18.2-374.1; (iv) any abduction of a child; (v) any felony or Class 1 misdemeanor drug offense involving a child; or (vi) contributing to the delinquency of a minor in violation of § 18.2-371, and provide the attorneys for the Commonwealth and the local law-enforcement agency with records of any complaints of abuse or neglect involving the victim or the alleged perpetrator. The local department shall not allow reports of the death of the victim from other local agencies to substitute for direct reports to the attorney for the Commonwealth and the local law-enforcement agency;

6. Send a follow-up report based on the investigation to the central registry within fourteen days and at subsequent intervals to be determined by Board regulations;

7. Determine within forty-five days if a report of abuse or neglect is founded or unfounded and transmit a report to such effect to the central registry and to the person who is the subject of the investigation. However, upon written justification by the local department, such determination may be extended, not to exceed a total of sixty days. If through the exercise of reasonable diligence the department is unable to find the child who is the subject of the report, the time the child cannot be found shall not be computed as part of the forty-five-day or sixty-day period and documentation of such reasonable diligence shall be placed in the record;

8. If a report of abuse or neglect is unfounded, transmit a report to such effect to the complainant and parent or guardian and the person responsible for the care of the child in those cases where such person was suspected of abuse or neglect;

9. When abuse or neglect is suspected in any case involving the death of a child, report the case immediately to the regional medical examiner and the local law-enforcement agency;

10. Use reasonable diligence to locate (i) any child for whom a report of suspected abuse or neglect has been received and is under investigation or for whom a founded determination of abuse and neglect has been made and a child protective services case opened and (ii) persons who are the subject of a report that is under investigation, if the whereabouts of the child or such persons are unknown to the local department;

11. When an abused or neglected child and the persons who are the subject of an open child protective services case have relocated out of the jurisdiction of the local department, notify the child protective services agency in the jurisdiction to which such persons have relocated, whether inside or outside of the Commonwealth, and forward to such agency relevant portions of the case record. The receiving local department shall arrange protective and rehabilitative services as required by this section; and

12. When a child for whom a report of suspected abuse or neglect has been received and is under investigation and the child and/or the child's parents or other persons responsible for the child's care who are the subject of the report that is under investigation have relocated out of the jurisdiction of the local department, notify the child protective services agency in the jurisdiction to which the child and/or such persons have relocated, whether inside or outside of the Commonwealth, and complete such investigation by requesting such agency's assistance in completing the investigation.

The local department that completes the investigation shall forward to the receiving agency relevant portions of the case record in order for the receiving agency to arrange protective and rehabilitative services as required by this section.

F. The local department shall foster, when practicable, the creation, maintenance and coordination of hospital and community-based multi-disciplinary teams which shall include where possible, but not be limited to, members of the medical, mental health, social work, nursing, education, legal and law-enforcement professions. Such teams shall assist the local departments in identifying abused and neglected children; coordinating medical, social, and legal services for the children and their families; developing innovative programs for detection and prevention of child abuse; promoting community concern and action in the area of child abuse and neglect; and disseminating information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat child abuse and neglect. These teams may be the family assessment and planning teams established pursuant to § 2.1-753. Multi-disciplinary teams may develop agreements regarding the exchange of information among the parties for the purposes of the investigation and disposition of complaints of child abuse and neglect, delivery of services, and child protection. Any information exchanged in accordance with the agreement shall not be considered to be a violation of the provisions of § 63.1-53 or § 63.1-209.

The local department shall also coordinate its efforts in the provision of these services for abused and neglected children with the judge and staff of the court.

G. The local department shall report annually on its activities concerning abused and neglected children to the court and to the Child-Protective Services Unit in the Department on forms provided by the Department.

H. Statements, or any evidence derived therefrom, made to local department child-protective services personnel, or to any person performing the duties of such personnel, by any person accused of the abuse, injury, neglect or death of a child after the arrest of such person, shall not be used in evidence in the case in chief against such person in the criminal proceeding on the question of guilt or innocence over the objection of the accused, unless the statement was made after such person was fully advised (i) of his right to remain silent, (ii) that anything he says may be used against him in a court of law, (iii) that he has a right to the presence of an attorney during any interviews, and (iv) that if he cannot afford an attorney, one will be appointed for him prior to any questioning.

I. Notwithstanding any other provision of law, the local department, in accordance with Board regulations, shall transmit information regarding founded complaints and may transmit other information regarding reports, complaints, and investigations involving active duty military personnel or members of their household to family advocacy representatives of the United States Armed Forces.

§ 63.1-248.6. (Delayed effective date) Local departments to establish child-protective services; duties.

A. Each local department shall establish child-protective services under a departmental coordinator within such department or with one or more adjacent local departments which shall be staffed with qualified personnel pursuant to regulations promulgated by

the State Board of Social Services. The local department shall be the public agency responsible for receiving and investigating complaints and reports, except that (i) in cases where the reports or complaints are to be made to the family court and the judge determines that no local department of social services within a reasonable geographic distance can impartially investigate the report, the court shall be responsible for the investigation and (ii) in cases where an employee at a private or state-operated hospital, institution or other facility, or an employee of a school board is suspected of abusing or neglecting a child in such hospital, institution or other facility, or public school, the local department shall request the Department to assist in conducting the investigation in accordance with rules and regulations approved by the State Board.

B. The local department shall ensure, through its own personnel or through cooperative arrangements with other local agencies, that personnel who investigate reports or complaints that an employee of a private or state-operated hospital, institution or other facility, or an employee of a school board, abused or neglected a child in such hospital, institution or other facility, or public school, are qualified and assisted by the Department in accordance with State Board regulations.

C. The local department shall ensure, through its own personnel or through cooperative arrangements with other local agencies, the capability of receiving reports or complaints and responding to them promptly on a twenty-four-hours-a-day, seven-days-per-week basis.

D. The local department shall widely publicize a telephone number for receiving complaints and reports.

E. The local department shall upon receipt of a report or complaint:

1. Make immediate investigation *and, if the report or complaint was based upon one of the factors specified in subsection A1 of § 63.1-248.3, the department may file a petition pursuant to § 16.1-241.3;*

2. When investigation of a complaint reveals cause to suspect abuse or neglect, complete a report and transmit it forthwith to the central registry, *except that no such report shall be transmitted in cases in which the cause to suspect abuse or neglect is one of the factors specified in subsection A1 of § 63.1-248.3, if the mother sought substance abuse counseling or treatment prior to the child's birth;*

3. When abuse or neglect is found, arrange for necessary protective and rehabilitative services to be provided to the child and his family;

4. If removal of the child or his siblings from their home is deemed necessary, petition the court for such removal;

5. Report immediately to the attorney for the Commonwealth and the local law-enforcement agency and make available to them the records of the local department when abuse or neglect is suspected in any case involving (i) death of a child; (ii) injury or threatened injury to the child in which a felony or Class 1 misdemeanor is also suspected; (iii) any sexual abuse, suspected sexual abuse or other sexual offense involving a child, including but not limited to the use or display of the child in sexually explicit visual material, as defined in § 18.2-374.1; (iv) any abduction of a child; (v) any felony or Class 1 misdemeanor drug offense involving a child; or (vi) contributing to the delinquency of a minor in violation of § 18.2-371, and provide the attorneys for the Commonwealth and the

local law-enforcement agency with records of any complaints of abuse or neglect involving the victim or the alleged perpetrator. The local department shall not allow reports of the death of the victim from other local agencies to substitute for a direct report to the attorney for the Commonwealth and the local law-enforcement agency;

6. Send a follow-up report based on the investigation to the central registry within fourteen days and at subsequent intervals to be determined by Board regulations;

7. Determine within forty-five days if a report of abuse or neglect is founded or unfounded and transmit a report to such effect to the central registry and to the person who is the subject of the investigation. However, upon written justification by the local department, such determination may be extended, not to exceed a total of sixty days. If through the exercise of reasonable diligence the department is unable to find the child who is the subject of the report, the time the child cannot be found shall not be computed as part of the forty-five-day or sixty-day period and documentation of such reasonable diligence shall be placed in the record;

8. If a report of abuse or neglect is unfounded, transmit a report to such effect to the complainant and parent or guardian and the person responsible for the care of the child in those cases where such person was suspected of abuse or neglect;

9. When abuse or neglect is suspected in any case involving the death of a child, report the case immediately to the regional medical examiner and the local law-enforcement agency;

10. Use reasonable diligence to locate (i) any child for whom a report of suspected abuse or neglect has been received and is under investigation or for whom a founded determination of abuse and neglect has been made and a child protective services case opened and (ii) persons who are the subject of a report that is under investigation, if the whereabouts of the child or such persons are unknown to the local department;

11. When an abused or neglected child and the persons who are the subject of an open child protective services case have relocated out of the jurisdiction of the local department, notify the child protective services agency in the jurisdiction to which such persons have relocated, whether inside or outside of the Commonwealth, and forward to such agency relevant portions of the case record. The receiving local department shall arrange protective and rehabilitative services as required by this section; and

12. When a child for whom a report of suspected abuse or neglect has been received and is under investigation and the child and/or the child's parents or other persons responsible for the child's care who are the subject of the report that is under investigation have relocated out of the jurisdiction of the local department, notify the child protective services agency in the jurisdiction to which the child and/or such persons have relocated, whether inside or outside of the Commonwealth, and complete such investigation by requesting such agency's assistance in completing the investigation. The local department that completes the investigation shall forward to the receiving agency relevant portions of the case record in order for the receiving agency to arrange protective and rehabilitative services as required by this section.

F. The local department shall foster, when practicable, the creation, maintenance and coordination of hospital and community-based multi-disciplinary teams which shall

include where possible, but not be limited to, members of the medical, mental health, social work, nursing, education, legal and law-enforcement professions. Such teams shall assist the local departments in identifying abused and neglected children; coordinating medical, social, and legal services for the children and their families; developing innovative programs for detection and prevention of child abuse; promoting community concern and action in the area of child abuse and neglect; and disseminating information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat child abuse and neglect. These teams may be the family assessment and planning teams established pursuant to § 2.1-753. Multi-disciplinary teams may develop agreements regarding the exchange of information among the parties for the purposes of the investigation and disposition of complaints of child abuse and neglect, delivery of services, and child protection. Any information exchanged in accordance with the agreement shall not be considered to be a violation of the provisions of § 63.1-53 or § 63.1-209.

The local department shall also coordinate its efforts in the provision of these services for abused and neglected children with the judge and staff of the court.

G. The local department shall report annually on its activities concerning abused and neglected children to the court and to the Child-Protective Services Unit in the Department on forms provided by the Department.

H. Statements, or any evidence derived therefrom, made to local department child-protective services personnel, or to any person performing the duties of such personnel, by any person accused of the abuse, injury, neglect or death of a child after the arrest of such person, shall not be used in evidence in the case in chief against such person in the criminal proceeding on the question of guilt or innocence over the objection of the accused, unless the statement was made after such person was fully advised (i) of his right to remain silent, (ii) that anything he says may be used against him in a court of law, (iii) that he has a right to the presence of an attorney during any interviews, and (iv) that if he cannot afford an attorney, one will be appointed for him prior to any questioning.

I. Notwithstanding any other provision of law, the local department, in accordance with Board regulations, shall transmit information regarding founded complaints and may transmit other information regarding reports, complaints, and investigations involving active duty military personnel or members of their household to family advocacy representatives of the United States Armed Forces.

2. That on or before October 1, 1999, and each year thereafter for the following two years, the Department of Social Services shall report to the General Assembly on the implementation of this act. The report shall include data compiled in conjunction with the State Board of Medicine, the Department of Health, the Department of Mental Health, Mental Retardation and Substance Abuse Services and the Office of the Executive Secretary of the Supreme Court, on the numbers of mothers and infants affected, the number of reports made pursuant to subsection A1 of § 63.1-248.3 and investigations resulting therefrom, the outcome of those investigations, the number of petitions filed with the juvenile courts pursuant to § 16.1-241.3 and the disposition on those petitions, the types of treatments and other services provided and such other information as representatives of those departments having expertise in perinatal addiction or abuse and neglect cases deem appropriate to a thorough evaluation of this act. For purposes

of preparing this report, the departments and offices shall establish procedures which are necessary and appropriate to track cases involving suspected addiction of newborn infants during the period to be covered by the report.

CHAPTER 704

An Act to amend and reenact §§ 63.1-248.3 and 63.1-248.6 of the Code of Virginia, as they are currently effective and as they may become effective, and to amend the Code of Virginia by adding a section numbered 16.1-241.3, relating to child protective services.

[S 557]

Approved April 16, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.1-248.3 and 63.1-248.6 of the Code of Virginia, as they are currently effective and as they may become effective, are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 16.1-241.3 as follows:

§ 16.1-241.3. Newborn children; substance abuse.

Upon the filing of a petition, within twenty-one days of a child's birth, alleging that an investigation has been commenced in response to a report of suspected abuse or neglect of the child based upon a factor specified in subsection A1 of § 63.1-248.3, the court may enter any order authorized pursuant to this chapter which the court deems necessary to protect the health and welfare of the child pending final disposition of the investigation pursuant to Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1 or other proceedings brought pursuant to this chapter. Such orders may include, but shall not be limited to, an emergency removal order pursuant to § 16.1-251, a preliminary protective order pursuant to § 16.1-253 or an order authorized pursuant to subdivisions 1 through 4 of subsection A of § 16.1-278.2. The fact that an order was entered pursuant to this section shall not be admissible as evidence in any criminal, civil or administrative proceeding other than a proceeding to enforce the order.

The order shall be effective for a limited duration not to exceed the period of time necessary to conclude the investigation and any proceedings initiated pursuant to Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1, but shall be a final order subject to appeal.

§ 63.1-248.3. Physicians, nurses, teachers, etc., to report certain injuries to children; penalty for failure to report.

A. The following persons who, in their professional or official capacity, have reason to suspect that a child is an abused or neglected child, shall report the matter immediately, except as hereinafter provided, to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred or to the Department of Social Services' toll-free child abuse and neglect hotline:

1. Any person licensed to practice medicine or any of the healing arts,
2. Any hospital resident or intern, and any person employed in the nursing profession,
3. Any person employed as a social worker,
4. Any probation officer,

5. Any teacher or other person employed in a public or private school, kindergarten or nursery school,
6. Any person providing full-time or part-time child care for pay on a regularly planned basis,
7. Any duly accredited Christian Science practitioner,
8. Any mental health professional,
9. Any law-enforcement officer,
10. Any mediator eligible to receive court referrals pursuant to § 8.01-576.8,
11. Any professional staff person, not previously enumerated, employed by a private or state-operated hospital, institution or facility to which children have been committed or where children have been placed for care and treatment, and
12. Any person associated with or employed by any private organization responsible for the care, custody or control of children.

If neither the locality in which the child resides or where the abuse or neglect is believed to have occurred is known, then such report shall be made to the local department of the county or city where the abuse or neglect was discovered or to the Department of Social Services' toll-free child abuse and neglect hotline.

If an employee of the local department is suspected of abusing or neglecting a child, the report shall be made to the juvenile and domestic relations district court of the county or city where the abuse or neglect was discovered. Upon receipt of such a report by the court, the judge of the juvenile and domestic relations district court shall assign the report to a local department of social services that is not the employer of the suspected employee for investigation; or, if the judge believes that no local department of social services within a reasonable geographic distance can be impartial in investigating the reported case, the judge shall assign the report to the court service unit of his court for investigation. The judge may consult with the State Department of Social Services in selecting a local department to conduct the investigation.

If the information is received by a teacher, staff member, resident, intern or nurse in the course of professional services in a hospital, school or similar institution, such person may, in place of said report, immediately notify the person in charge of the institution or department, or his designee, who shall make such report forthwith.

The initial report may be an oral report but such report shall be reduced to writing by the child abuse coordinator of the local department on a form prescribed by the State Board of Social Services. The person required to make the report shall disclose all information which is the basis for his suspicion of abuse or neglect of the child and, upon request, shall make available to the child-protective services coordinator and the local department investigating the reported case of child abuse or neglect any records or reports which document the basis for the report.

A1. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall include (i) a finding made by an attending physician within seven days of a child's birth that the results of a blood or urine test conducted within forty-eight hours of the birth of the child indicate the presence of a controlled substance not prescribed for the mother by a physician, (ii) a finding by an attending physician made within forty-eight hours of a child's birth that the child was born dependent on a controlled substance which was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms, (iii) a diagnosis by an attending physician made within seven days of a child's birth that the child has an illness, disease or condition which, to a reasonable degree of medical certainty, is attributable to in utero exposure to a controlled substance which was not prescribed by a physician for the mother or the child, or (iv) a diagnosis by an attending physician made within seven days of a child's birth that the child has fetal alcohol syndrome attributable to in utero exposure to alcohol. When "reason to suspect" is based upon this subsection, such fact shall be included in the report along with the facts relied upon by the person making the report.

B. Any person required to file a report pursuant to ~~subsection A~~ of this section who fails to do so within seventy-two hours of his first suspicion of child abuse or neglect shall be fined not more than \$500 for the first failure and for any subsequent failures not less than \$100 nor more than \$1,000.

§ 63.1-248.3. (Delayed effective date) Physicians, nurses, teachers, etc., to report certain injuries to children; penalty for failure to report.

A. The following persons who, in their professional or official capacity, have reason to suspect that a child is an abused or neglected child, shall report the matter immediately, except as hereinafter provided, to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred or to the Department of Social Services' toll-free child abuse and neglect hotline:

1. Any person licensed to practice medicine or any of the healing arts,
2. Any hospital resident or intern, and any person employed in the nursing profession,
3. Any person employed as a social worker,
4. Any probation officer,
5. Any teacher or other person employed in a public or private school, kindergarten or nursery school,
6. Any person providing full-time or part-time child care for pay on a regularly planned basis,
7. Any duly accredited Christian Science practitioner,
8. Any mental health professional,
9. Any law-enforcement officer,
10. Any mediator eligible to receive court referrals pursuant to § 8.01-576.8,

11. Any professional staff person, not previously enumerated, employed by a private or state-operated hospital, institution or facility to which children have been committed or where children have been placed for care and treatment, and

12. Any person associated with or employed by any private organization responsible for the care, custody or control of children.

If neither the locality in which the child resides or where the abuse or neglect is believed to have occurred is known, then such report shall be made to the local department of the county or city where the abuse or neglect was discovered or to the Department of Social Services' toll-free child abuse and neglect hotline.

If an employee of the local department is suspected of abusing or neglecting a child, the report shall be made to the family court of the county or city where the abuse or neglect was discovered. Upon receipt of such a report by the court, the judge of the family court shall assign the report to a local department of social services that is not the employer of the suspected employee for investigation; or, if the judge believes that no local department of social services in a reasonable geographic distance can be impartial in investigating the reported case, the judge shall assign the report to the court service unit of his court for investigation. The judge may consult with the State Department of Social Services in selecting a local department to conduct the investigation.

If the information is received by a teacher, staff member, resident, intern or nurse in the course of professional services in a hospital, school or similar institution, such person may, in place of said report, immediately notify the person in charge of the institution or department, or his designee, who shall make such report forthwith.

The initial report may be an oral report but such report shall be reduced to writing by the child abuse coordinator of the local department on a form prescribed by the State Board of Social Services. The person required to make the report shall disclose all information which is the basis for his suspicion of abuse or neglect of the child and, upon request, shall make available to the child-protective services coordinator and the local department investigating the reported case of child abuse or neglect any records or reports which document the basis for the report.

A1. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall include (i) a finding made by an attending physician within seven days of a child's birth that the results of a blood or urine test conducted within forty-eight hours of the birth of the child indicate the presence of a controlled substance not prescribed for the mother by a physician, (ii) a finding by an attending physician made within forty-eight hours of a child's birth that the child was born dependent on a controlled substance which was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms, (iii) a diagnosis by an attending physician made within seven days of a child's birth that the child has an illness, disease or condition which, to a reasonable degree of medical certainty, is attributable to in utero exposure to a controlled substance which was not prescribed by a physician for the mother or the child, or (iv) a diagnosis by an attending physician made within seven days of a child's birth that the child has fetal alcohol syndrome attributable to in utero exposure to alcohol. When "reason to suspect" is based upon this subsection, such fact shall be included in the report, along with the facts relied upon by the person making the report.

B. Any person required to file a report pursuant to ~~subsection A~~ of this section who fails to do so within seventy-two hours of his first suspicion of child abuse or neglect shall be fined not more than \$500 for the first failure and for any subsequent failures not less than \$100 nor more than \$1,000.

§ 63.1-248.6. Local departments to establish child-protective services; duties.

A. Each local department shall establish child-protective services under a departmental coordinator within such department or with one or more adjacent local departments which shall be staffed with qualified personnel pursuant to regulations promulgated by the State Board of Social Services. The local department shall be the public agency responsible for receiving and investigating complaints and reports, except that (i) in cases where the reports or complaints are to be made to the juvenile and domestic relations district court and the judge determines that no local department of social services within a reasonable geographic distance can impartially investigate the report, the court shall be responsible for the investigation and (ii) in cases where an employee at a private or state-operated hospital, institution or other facility, or an employee of a school board is suspected of abusing or neglecting a child in such hospital, institution or other facility, or public school, the local department shall request the Department to assist in conducting the investigation in accordance with rules and regulations approved by the State Board.

B. The local department shall ensure, through its own personnel or through cooperative arrangements with other local agencies, that personnel who investigate reports or complaints that an employee of a private or state-operated hospital, institution or other facility, or an employee of a school board, abused or neglected a child in such hospital, institution or other facility, or public school, are qualified and assisted by the Department in accordance with State Board regulations.

C. The local department shall ensure, through its own personnel or through cooperative arrangements with other local agencies, the capability of receiving reports or complaints and responding to them promptly on a twenty-four-hours-a-day, seven-days-per-week basis.

D. The local department shall widely publicize a telephone number for receiving complaints and reports.

E. The local department shall upon receipt of a report or complaint:

1. Make immediate investigation *and, if the report or complaint was based upon one of the factors specified in subsection A1 of § 63.1-248.3, the department may file a petition pursuant to § 16.1-241.3;*

2. When investigation of a complaint reveals cause to suspect abuse or neglect, complete a report and transmit it forthwith to the central registry, *except that no such report shall be transmitted in cases in which the cause to suspect abuse or neglect is one of the factors specified in subsection A1 of § 63.1-248.3, if the mother sought substance abuse counseling or treatment prior to the child's birth;*

3. When abuse or neglect is found, arrange for necessary protective and rehabilitative services to be provided to the child and his family;

4. If removal of the child or his siblings from their home is deemed necessary, petition the court for such removal;
5. Report immediately to the attorney for the Commonwealth and the local law-enforcement agency and make available to them the records of the local department when abuse or neglect is suspected in any case involving (i) death of a child; (ii) injury or threatened injury to the child in which a felony or Class 1 misdemeanor is also suspected; (iii) any sexual abuse, suspected sexual abuse or other sexual offense involving a child, including but not limited to the use or display of the child in sexually explicit visual material, as defined in § 18.2-374.1; (iv) any abduction of a child; (v) any felony or Class 1 misdemeanor drug offense involving a child; or (vi) contributing to the delinquency of a minor in violation of § 18.2-371, and provide the attorneys for the Commonwealth and the local law-enforcement agency with records of any complaints of abuse or neglect involving the victim or the alleged perpetrator. The local department shall not allow reports of the death of the victim from other local agencies to substitute for direct reports to the attorney for the Commonwealth and the local law-enforcement agency;
6. Send a follow-up report based on the investigation to the central registry within fourteen days and at subsequent intervals to be determined by Board regulations;
7. Determine within forty-five days if a report of abuse or neglect is founded or unfounded and transmit a report to such effect to the central registry and to the person who is the subject of the investigation. However, upon written justification by the local department, such determination may be extended, not to exceed a total of sixty days. If through the exercise of reasonable diligence the department is unable to find the child who is the subject of the report, the time the child cannot be found shall not be computed as part of the forty-five-day or sixty-day period and documentation of such reasonable diligence shall be placed in the record;
8. If a report of abuse or neglect is unfounded, transmit a report to such effect to the complainant and parent or guardian and the person responsible for the care of the child in those cases where such person was suspected of abuse or neglect;
9. When abuse or neglect is suspected in any case involving the death of a child, report the case immediately to the regional medical examiner and the local law-enforcement agency;
10. Use reasonable diligence to locate (i) any child for whom a report of suspected abuse or neglect has been received and is under investigation or for whom a founded determination of abuse and neglect has been made and a child protective services case opened and (ii) persons who are the subject of a report that is under investigation, if the whereabouts of the child or such persons are unknown to the local department;
11. When an abused or neglected child and the persons who are the subject of an open child protective services case have relocated out of the jurisdiction of the local department, notify the child protective services agency in the jurisdiction to which such persons have relocated, whether inside or outside of the Commonwealth, and forward to such agency relevant portions of the case record. The receiving local department shall arrange protective and rehabilitative services as required by this section; and

12. When a child for whom a report of suspected abuse or neglect has been received and is under investigation and the child and/or the child's parents or other persons responsible for the child's care who are the subject of the report that is under investigation have relocated out of the jurisdiction of the local department, notify the child protective services agency in the jurisdiction to which the child and/or such persons have relocated, whether inside or outside of the Commonwealth, and complete such investigation by requesting such agency's assistance in completing the investigation. The local department that completes the investigation shall forward to the receiving agency relevant portions of the case record in order for the receiving agency to arrange protective and rehabilitative services as required by this section.

F. The local department shall foster, when practicable, the creation, maintenance and coordination of hospital and community-based multi-disciplinary teams which shall include where possible, but not be limited to, members of the medical, mental health, social work, nursing, education, legal and law-enforcement professions. Such teams shall assist the local departments in identifying abused and neglected children; coordinating medical, social, and legal services for the children and their families; developing innovative programs for detection and prevention of child abuse; promoting community concern and action in the area of child abuse and neglect; and disseminating information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat child abuse and neglect. These teams may be the family assessment and planning teams established pursuant to § 2.1-753. Multi-disciplinary teams may develop agreements regarding the exchange of information among the parties for the purposes of the investigation and disposition of complaints of child abuse and neglect, delivery of services, and child protection. Any information exchanged in accordance with the agreement shall not be considered to be a violation of the provisions of § 63.1-53 or § 63.1-209.

The local department shall also coordinate its efforts in the provision of these services for abused and neglected children with the judge and staff of the court.

G. The local department shall report annually on its activities concerning abused and neglected children to the court and to the Child-Protective Services Unit in the Department on forms provided by the Department.

H. Statements, or any evidence derived therefrom, made to local department child-protective services personnel, or to any person performing the duties of such personnel, by any person accused of the abuse, injury, neglect or death of a child after the arrest of such person, shall not be used in evidence in the case in chief against such person in the criminal proceeding on the question of guilt or innocence over the objection of the accused, unless the statement was made after such person was fully advised (i) of his right to remain silent, (ii) that anything he says may be used against him in a court of law, (iii) that he has a right to the presence of an attorney during any interviews, and (iv) that if he cannot afford an attorney, one will be appointed for him prior to any questioning.

I. Notwithstanding any other provision of law, the local department, in accordance with Board regulations, shall transmit information regarding founded complaints and may transmit other information regarding reports, complaints, and investigations involving active duty military personnel or members of their household to family advocacy representatives of the United States Armed Forces.

§ 63.1-248.6. (Delayed effective date) Local departments to establish child-protective services; duties.

A. Each local department shall establish child-protective services under a departmental coordinator within such department or with one or more adjacent local departments which shall be staffed with qualified personnel pursuant to regulations promulgated by the State Board of Social Services. The local department shall be the public agency responsible for receiving and investigating complaints and reports, except that (i) in cases where the reports or complaints are to be made to the family court and the judge determines that no local department of social services within a reasonable geographic distance can impartially investigate the report, the court shall be responsible for the investigation and (ii) in cases where an employee at a private or state-operated hospital, institution or other facility, or an employee of a school board is suspected of abusing or neglecting a child in such hospital, institution or other facility, or public school, the local department shall request the Department to assist in conducting the investigation in accordance with rules and regulations approved by the State Board.

B. The local department shall ensure, through its own personnel or through cooperative arrangements with other local agencies, that personnel who investigate reports or complaints that an employee of a private or state-operated hospital, institution or other facility, or an employee of a school board, abused or neglected a child in such hospital, institution or other facility, or public school, are qualified and assisted by the Department in accordance with State Board regulations.

C. The local department shall ensure, through its own personnel or through cooperative arrangements with other local agencies, the capability of receiving reports or complaints and responding to them promptly on a twenty-four-hours-a-day, seven-days-per-week basis.

D. The local department shall widely publicize a telephone number for receiving complaints and reports.

E. The local department shall upon receipt of a report or complaint:

1. Make immediate investigation *and, if the report or complaint was based upon one of the factors specified in subsection A1 of § 63.1-248.3, the department may file a petition pursuant to § 16.1-241.3;*

2. When investigation of a complaint reveals cause to suspect abuse or neglect, complete a report and transmit it forthwith to the central registry, *except that no such report shall be transmitted in cases in which the cause to suspect abuse or neglect is one of the factors specified in subsection A1 of § 63.1-248.3, if the mother sought substance abuse counseling or treatment prior to the child's birth;*

3. When abuse or neglect is found, arrange for necessary protective and rehabilitative services to be provided to the child and his family;

4. If removal of the child or his siblings from their home is deemed necessary, petition the court for such removal;

5. Report immediately to the attorney for the Commonwealth and the local law-enforcement agency and make available to them the records of the local department when abuse or neglect is suspected in any case involving (i) death of a child; (ii) injury or threatened injury to the child in which a felony or Class 1 misdemeanor is also suspected; (iii) any sexual abuse, suspected sexual abuse or other sexual offense involving a child, including but not limited to the use or display of the child in sexually explicit visual material, as defined in § 18.2-374.1; (iv) any abduction of a child; (v) any felony or Class 1 misdemeanor drug offense involving a child; or (vi) contributing to the delinquency of a minor in violation of § 18.2-371, and provide the attorneys for the Commonwealth and the local law-enforcement agency with records of any complaints of abuse or neglect involving the victim or the alleged perpetrator. The local department shall not allow reports of the death of the victim from other local agencies to substitute for a direct report to the attorney for the Commonwealth and the local law-enforcement agency;
6. Send a follow-up report based on the investigation to the central registry within fourteen days and at subsequent intervals to be determined by Board regulations;
7. Determine within forty-five days if a report of abuse or neglect is founded or unfounded and transmit a report to such effect to the central registry and to the person who is the subject of the investigation. However, upon written justification by the local department, such determination may be extended, not to exceed a total of sixty days. If through the exercise of reasonable diligence the department is unable to find the child who is the subject of the report, the time the child cannot be found shall not be computed as part of the forty-five-day or sixty-day period and documentation of such reasonable diligence shall be placed in the record;
8. If a report of abuse or neglect is unfounded, transmit a report to such effect to the complainant and parent or guardian and the person responsible for the care of the child in those cases where such person was suspected of abuse or neglect;
9. When abuse or neglect is suspected in any case involving the death of a child, report the case immediately to the regional medical examiner and the local law-enforcement agency;
10. Use reasonable diligence to locate (i) any child for whom a report of suspected abuse or neglect has been received and is under investigation or for whom a founded determination of abuse and neglect has been made and a child protective services case opened and (ii) persons who are the subject of a report that is under investigation, if the whereabouts of the child or such persons are unknown to the local department;
11. When an abused or neglected child and the persons who are the subject of an open child protective services case have relocated out of the jurisdiction of the local department, notify the child protective services agency in the jurisdiction to which such persons have relocated, whether inside or outside of the Commonwealth, and forward to such agency relevant portions of the case record. The receiving local department shall arrange protective and rehabilitative services as required by this section; and
12. When a child for whom a report of suspected abuse or neglect has been received and is under investigation and the child and/or the child's parents or other persons responsible for the child's care who are the subject of the report that is under investigation have relocated out of the jurisdiction of the local department, notify the child

protective services agency in the jurisdiction to which the child and/or such persons have relocated, whether inside or outside of the Commonwealth, and complete such investigation by requesting such agency's assistance in completing the investigation. The local department that completes the investigation shall forward to the receiving agency relevant portions of the case record in order for the receiving agency to arrange protective and rehabilitative services as required by this section.

F. The local department shall foster, when practicable, the creation, maintenance and coordination of hospital and community-based multi-disciplinary teams which shall include where possible, but not be limited to, members of the medical, mental health, social work, nursing, education, legal and law-enforcement professions. Such teams shall assist the local departments in identifying abused and neglected children; coordinating medical, social, and legal services for the children and their families; developing innovative programs for detection and prevention of child abuse; promoting community concern and action in the area of child abuse and neglect; and disseminating information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat child abuse and neglect. These teams may be the family assessment and planning teams established pursuant to § 2.1-753. Multi-disciplinary teams may develop agreements regarding the exchange of information among the parties for the purposes of the investigation and disposition of complaints of child abuse and neglect, delivery of services, and child protection. Any information exchanged in accordance with the agreement shall not be considered to be a violation of the provisions of § 63.1-53 or § 63.1-209.

The local department shall also coordinate its efforts in the provision of these services for abused and neglected children with the judge and staff of the court.

G. The local department shall report annually on its activities concerning abused and neglected children to the court and to the Child-Protective Services Unit in the Department on forms provided by the Department.

H. Statements, or any evidence derived therefrom, made to local department child-protective services personnel, or to any person performing the duties of such personnel, by any person accused of the abuse, injury, neglect or death of a child after the arrest of such person, shall not be used in evidence in the case in chief against such person in the criminal proceeding on the question of guilt or innocence over the objection of the accused, unless the statement was made after such person was fully advised (i) of his right to remain silent, (ii) that anything he says may be used against him in a court of law, (iii) that he has a right to the presence of an attorney during any interviews, and (iv) that if he cannot afford an attorney, one will be appointed for him prior to any questioning.

I. Notwithstanding any other provision of law, the local department, in accordance with Board regulations, shall transmit information regarding founded complaints and may transmit other information regarding reports, complaints, and investigations involving active duty military personnel or members of their household to family advocacy representatives of the United States Armed Forces.

2. That on or before October 1, 1999, and each year thereafter for the following two years, the Department of Social Services shall report to the General Assembly on the implementation of this act. The report shall include data compiled in conjunction with the State Board of Medicine, the Department of Health, the Department of Mental Health,

Mental Retardation and Substance Abuse Services and the Office of the Executive Secretary of the Supreme Court, on the numbers of mothers and infants affected, the number of reports made pursuant to subsection A1 of § 63.1-248.3 and investigations resulting therefrom, the outcome of those investigations, the number of petitions filed with the juvenile courts pursuant to § 16.1-241.3 and the disposition on those petitions, the types of treatments and other services provided and such other information as representatives of those departments having expertise in perinatal addiction or abuse and neglect cases deem appropriate to a thorough evaluation of this act. For purposes of preparing this report, the departments and offices shall establish procedures which are necessary and appropriate to track cases involving suspected addiction of newborn infants during the period to be covered by the report.

APPENDIX II

WORK GROUP FOR INTERIM REPORT ON SUBSTANCE EXPOSED NEWBORNS

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APPENDIX III

CHILD PROTECTIVE SERVICES

Allegation Records of Substance Exposed Newborns by Locality of Assignment* July 1, 2000 – June 15, 2001

Alexandria	5	Montgomery	1
Arlington	5	Newport News	15
Bath	1	Norfolk	48
Bedford County	2	Northumberland	1
Bristol	2	Page	1
Campbell	1	Petersburg	4
Caroline	8	Pittsylvania	2
Carroll	2	Portsmouth	13
Charles City	1	Prince William	10
Chesapeake	10	Pulaski	2
Chesterfield	8	Richmond City	56
Colonial Heights	1	Roanoke City	15
Culpepper	1	Roanoke County	5
Cumberland	2	Rockingham	1
Danville	5	Spotsylvania	1
Fairfax County	18	Stafford	4
Franklin County	1	Suffolk	3
Frederick	1	Sussex	1
Fredericksburg	1	Surry	1
Galax	1	Tazewell	2
Grayson	1	Virginia Beach	4
Hampton	9	Warren	2
Hanover	3	Waynesboro	1
Henrico	7	Winchester	1
Henry	4	Wise	1
Isle Of Wight	1		
Lynchburg	8		
Manassas	1		
Martinsville	1		

TOTAL 306

*Virginia Department of Social Services, Child Protective Services, Online Automated Services Information System (OASIS)

