



COMMONWEALTH of VIRGINIA
Office of the Attorney General

Jason S. Miyares
Attorney General

202 North 9th Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120

MEMORANDUM

TO: Karin Clark
Virginia Department of Social Services

FROM: Jennifer C. Williamson
Senior Assistant Attorney General

DATE: March 7, 2023

SUBJECT: Review of Proposed 22 VAC40-705
Child Protective Services

I am in receipt of and have reviewed the attached regulation, which is being amended following promulgation of an emergency regulation deleting a notary requirement. You have asked the Office of the Attorney General to review this action and determine if the State Board of Social Services ("State Board") has the statutory authority to promulgate the regulation and if the regulation comports with applicable state law.

Pursuant to Virginia Code § 63.2-217, the State Board is required to promulgate regulations as may be necessary or desirable to carry out the purposes of Title 63.2 of the Virginia Code. The proposed regulation comports with applicable state law. Further, it is my opinion the State Board has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA") and Executive Order 19, including the Procedures of the Office of Regulatory Management, and that in so doing the State Board does not exceed that authority.

If you have any questions, please feel free to call me at (804) 225-3197.

Attachment

Project 7198 - Proposed

Department of Social Services

Remove Notary Requirement for Consent to Central Registry System Check

22VAC40-705-160. Releasing information.

A. In the following instances of mandatory disclosure the local department shall release child protective services information. The local department may do so without any written release.

1. Report to attorney for the Commonwealth and law enforcement pursuant to § 63.2-1503 D of the Code of Virginia.
2. Report to the regional medical examiner's office pursuant to § 63.2-1503 E of the Code of Virginia.
3. Any individual, including an individual against whom allegations of child abuse or neglect were made, may exercise his rights under the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq. of the Code of Virginia) to access personal information related to himself that is contained in the case record including, with the individual's ~~notarized~~ signed consent, a search of the Central Registry.
4. When the material requested includes personal information about other individuals, the local department shall be afforded a reasonable time in which to redact those parts of the record relating to other individuals.
5. Pursuant to the Child Abuse Prevention and Treatment Act, as amended (42 USC § 5101 et seq.), and federal regulations (45 CFR Part 1340), the local department shall provide case-specific information about child abuse and neglect reports and investigations to citizen review panels when requested.
6. Pursuant to the Child Abuse Prevention and Treatment Act, as amended (42 USC § 5101 et seq.), the department shall develop guidelines to allow for public disclosure in instances of child fatality or near fatality.

7. An individual's right to access information under the Government Data Collection and Dissemination Practices Act is stayed during criminal prosecution pursuant to § 63.2-1526 C of the Code of Virginia.

8. The local department shall disclose and release to the United States Armed Forces Family Advocacy Program child protective services information as required pursuant to 22VAC40-705-140.

9. Child protective services shall, on request by the Division of Child Support Enforcement, supply information pursuant to § 63.2-103 of the Code of Virginia.

10. The local department shall release child protective services information to a court appointed special advocate pursuant to § 9.1-156 A of the Code of Virginia.

11. The local department shall release child protective services information to a court-appointed guardian ad litem pursuant to § 16.1-266 G of the Code of Virginia.

12. In any case properly before a court having jurisdiction, if the court orders the local department to disclose information from a child abuse or neglect case record, the local department must either comply with the order if permitted under federal and state law or appeal the order if such disclosure is contrary to federal and state law.

B. The local department may use discretion in disclosing or releasing child protective services case record information, investigative and ongoing services to parties having a legitimate interest when the local department deems disclosure to be in the best interest of the child. The local department may disclose such information without a court order and without a written release pursuant to § 63.2-105 of the Code of Virginia.

C. Prior to disclosing information to any individuals or organizations, and to be consistent with § 63.2-105 of the Code of Virginia, the local department must consider the factors described in subdivisions 1, 2, and 3 of this subsection as some of the factors necessary to determine whether a person has a legitimate interest and the disclosure of information is in the best interest of the child:

1. The information will be used only for the purpose for which it is made available;

2. Such purpose shall be related to the goal of child protective or rehabilitative services; and
3. The confidential character of the information will be preserved to the greatest extent possible.

D. In cases of abuse or neglect in which the person who is the subject of the founded report or complaint has appealed the finding and has submitted a written request for the local department's records in accordance with § 63.2-1526 of the Code of Virginia, the local department shall not disclose or release to such person the following information: (i) the name of the person reporting incidents of child abuse or neglect; (ii) any information that may endanger the well-being of a child if such information or records are disclosed or released; (iii) information that pertains to the identity of a collateral witness or any other person if such disclosure may endanger life or safety; or (iv) information that is otherwise prohibited from being disclosed or released by state or federal law or regulation.

E. In all complaints or reports that are being investigated jointly with law enforcement, the local department shall release child protective services information in accordance with the following:

1. Pursuant to § 63.2-1516.1 B of the Code of Virginia, no information in the possession of the local department from such joint investigation shall be released by the local department prior to the conclusion of the criminal investigation except as authorized by the investigating law-enforcement officer, the law-enforcement officer's supervisor, or the local attorney for the Commonwealth.
2. Pursuant to § 63.2-1503 D of the Code of Virginia, the local department shall provide the attorney for the Commonwealth and the local law-enforcement agency with the information and records of the local department related to the investigation of the complaint, including records related to any complaints of abuse or neglect involving the victim or the alleged abuser or neglecter, and information or records pertaining to the identity of the person who reported the complaint of abuse or neglect.

F. Pursuant to §§ 63.2-1505 B and 63.2-1506 B of the Code of Virginia, the local department, upon request, must disclose to the child's parent or guardian the location of the child, provided that:

1. The investigation or family assessment has not been completed;
2. The parent or guardian requesting disclosure of the child's location has not been the subject of a founded report of child abuse or neglect;
3. The parent or guardian requesting disclosure of the child's location has legal custody of the child and provides to the local department any records or other information necessary to verify such custody;
4. The local department is not aware of any court order and has confirmed with the child's other parent or guardian or other person responsible for the care of the child that no court order has been issued that prohibits or limits contact by the parent or guardian requesting disclosure of the child's location with the child, the child's other parent or guardian or other person responsible for the care of the child, or any member of the household in which the child is located; and
5. Disclosure of the child's location to the parent or guardian will not compromise the safety of the child, the child's other parent or guardian, or any other person responsible for the care of the child.

22VAC40-705-170. Access to Central Registry.

A. The department will complete a search of the Central Registry upon request by a local department, upon receipt of a ~~notarized~~ signature of the individual whose name is being searched authorizing release of such information or a court order specifying a search of the Central Registry.

B. When the name being searched is found in the Central Registry, the department shall contact the local department responsible for the investigation to verify the information.