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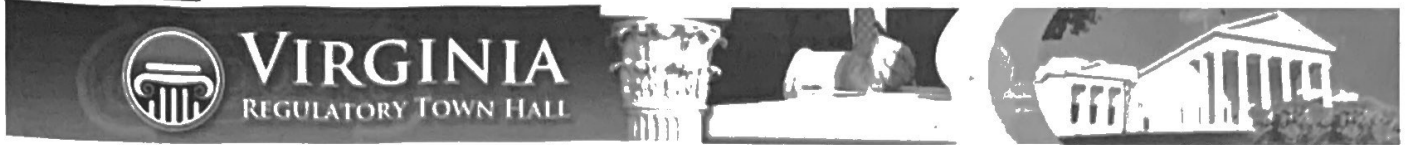
**DATE:** **July 20, 2020**

**SUBJECT:** **Exempt Final Regulation – Exempt Amendment to Child Protective Services,  
22 VAC 40-705.**

I am in receipt of the attached amendments to the Child Protective Services regulation 22 VAC 40-705. You have asked the Office of the Attorney General to determine if the State Board of Social Services (“State Board”) has the statutory authority to promulgate this regulation and if it comports with applicable state law.

Virginia Code § 63.2-217 mandates that the State Board promulgate regulations that are necessary to carry out the provisions of Title 63.2. The proposed amendments to the regulation are necessary to implement the requirements of legislation passed during the 2020 session of the General Assembly. These changes are set out in Chapter 38 (HB 287), Chapter 5 (HB 778), Chapter 228 (SB 412), Chapter 6 (HB 1006) and Chapter 234 (SB 706) of the 2020 Acts of Assembly.

It is my view that the State Board has the authority to promulgate the final regulation and that it is exempt from the provisions of Article 2 of the Administrative Process Act. If you have any questions or need additional information about this regulation, please contact me at 804-786-3450.

**Final Text****highlight****Action:** Exempt Amendment to Child Protective Services**Stage:** Final

6/29/20 8:13 AM [latest] ▼

**22VAC40-705-60. Authorities of local departments.**

A. When responding to valid complaints or reports, local departments have the following authorities:

1. To talk to any child suspected of being abused or neglected, or child's siblings, without the consent of and outside the presence of the parent or other caretaker, as set forth by § 63.2-1518 of the Code of Virginia.
2. To take or arrange for photographs and x-rays of a child who is the subject of a complaint without the consent of and outside the presence of the parent or other caretaker, as set forth in § 63.2-1520 of the Code of Virginia.
3. To take a child into custody on an emergency removal under such circumstances as set forth in § 63.2-1517 of the Code of Virginia.
  - a. A child protective services worker planning to take a child into emergency custody shall first consult with a supervisor. However, this requirement shall not delay action on the child protective services worker's part if a supervisor cannot be contacted and the situation requires immediate action.
  - b. When circumstances warrant that a child be taken into emergency custody during a family assessment, the report shall be reassigned immediately as an investigation.
  - c. Any person who takes a child into custody pursuant to § 63.2-1517 of the Code of Virginia shall be immune from any civil or criminal liability in connection therewith, unless it is proven that such person acted in bad faith or with malicious intent.
  - d. The local department shall have the authority to have a complete medical examination made of the child including a written medical report and, when appropriate, photographs and x-rays pursuant to § 63.2-1520 of the Code of Virginia.
  - e. When a child in emergency custody is in need of immediate medical or surgical treatment, the local director of social services or his designee may consent to such treatment when the parent does not provide consent and a court order is not immediately obtainable.
  - f. When a child is not in the local department's custody, the local department cannot consent to medical or surgical treatment of the child.
  - g. When a child is removed, every effort must be made to obtain an emergency removal order within four hours. Reasons for not doing so shall be stated in the petition for an emergency removal order.

h. Every effort shall be made to provide notice of the removal in person to the parent or guardian as soon as practicable.

i. Within 30 days of removing a child from the custody of the parents or legal guardians, the local department shall exercise due diligence to identify and notify in writing all maternal and paternal grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents) and all parents who have legal custody of any siblings of the child being removed and explain the options they have to participate in the care and placement of the child, subject to exceptions due to family or domestic violence. These notifications shall be documented in the state automated system. When notification to any of these relatives is not made, the local department shall document the reasons in the state automated system.

B. When responding to a complaint or report of abuse or neglect involving the human trafficking of a child, local departments may take a child into custody and maintain custody of the child for up to 72 hours without prior approval of a parent or guardian, provided that the alleged victim child has been identified as a victim of human trafficking as defined in § 63.2-100 of the Code of Virginia; the federal Trafficking Victims Protection Act of 2000 (22 USC § 7102 et seq.); and the federal Justice for Victims of Trafficking Act of 2015 (42 USC § 5101 et seq.) and pursuant to § 63.2-1517 of the Code of Virginia.

1. After taking the child into custody, the local department shall notify the parent or guardian of such child as soon as practicable. Every effort shall be made to provide such notice in person.

2. The local department shall also notify the Child-Protective Services Unit within the department whenever a child is taken into custody.

3. When a child is taken into custody by a child-protective services worker of a local department pursuant to this subsection, that child shall be returned as soon as practicable to the custody of his parent or guardian. However, the local department shall not be required to return the child to his parent or guardian if the circumstances are such that continuing in his place of residence or in the care or custody of such parent or guardian, or custodian or other person responsible for the child's care, presents an imminent danger to the child's life or health to the extent that severe or irremediable injury would be likely to result or if the evidence of abuse is perishable or subject to deterioration before a hearing can be held.

4. If the local department cannot return the child to the custody of his parents or guardians within 72 hours, the local department shall obtain an emergency removal order pursuant to § 16.1-251 of the Code of Virginia.

C. When conducting a human trafficking assessment pursuant to § 63.2-1506.1 of the Code of Virginia, the local department may interview the alleged child victim or his siblings without the consent and outside the presence of such child's or siblings' parent, guardian, legal custodian, or other person standing in loco parentis, or school personnel.

#### **22VAC40-705-120. Extensions and suspensions.**

A. The local department shall promptly notify the alleged abuser or neglecter and the alleged victim's parents or guardians of any extension of the deadline for the completion of the ~~family assessment~~ or investigation pursuant to § 63.2-1505 B 5 ~~or § 63.2-1506 B-3~~ of the Code of Virginia. The child protective services worker shall document the notifications and the reason for the need for additional time in the case record.

B. Pursuant to § 63.2-1505 B 5 of the Code of Virginia, when an investigation involving the death of a child or alleged sexual abuse of a child is delayed because of the unavailability of the records, the deadlines shall be suspended. When such unavailability of records occurs, the local department shall promptly notify the alleged abuser or neglector and the alleged victim's parents or guardians that the records are unavailable and the effect of the unavailability on the completion of the investigation. The child protective services worker shall document the notifications and the reason for the suspension in the case record. Upon receipt of the records necessary to make a finding, the local department shall complete the investigation.

C. The subject of the report shall be notified immediately if during the course of completing the family assessment the situation is reassessed and determined to meet the requirements, as specified in § 63.2-1506 B 7 of the Code of Virginia, to be investigated.

D. The subject of the report or complaint may consult with the local department to hear and refute evidence collected during the investigation. If a criminal charge is also filed against the alleged abuser for the same conduct involving the same victim child as investigated by the local department, pursuant to § 63.2-1516.1 B of the Code of Virginia, no information gathered during a joint investigation with law enforcement shall be released by the local department prior to the conclusion of the criminal investigation unless authorized by the investigating law-enforcement agency or the local attorney for the Commonwealth.

#### **22VAC40-705-130. Reporting of family assessment or investigation conclusions.**

##### **A. Unfounded investigation.**

1. Pursuant to § 63.2-1514 of the Code of Virginia, the local department shall report all unfounded case dispositions to the child abuse and neglect information system when disposition is made.
2. The department shall retain complaints or reports with an unfounded disposition in the child abuse and neglect information system to provide local departments with information regarding prior investigations.
3. This record shall be kept separate from the Central Registry and accessible only to the department and to local departments.
4. The record of the investigation with an unfounded disposition shall be purged ~~one year~~ three years after the date of the complaint or report if there are no subsequent complaints or reports regarding the individual against whom allegations of abuse or neglect were made or regarding the same child in ~~that one year~~ those three years.
5. The individual against whom an unfounded disposition for allegations of abuse or neglect was made may request in writing that the local department retain the record for an additional period of up to two years.
6. The individual against whom allegations of abuse or neglect were made may request in writing that both the local department and the department shall immediately purge the record upon presentation of a certified copy of a court order that there has been a civil action that determined that the complaint or report was made in bad faith or with malicious intent pursuant to § 63.2-1514 of the Code of Virginia.

##### **B. Founded investigation.**

1. The local department shall report all founded dispositions to the child abuse and neglect information system for inclusion in the Central Registry pursuant to § 63.2-1515 of the Code of Virginia.
2. Identifying information about the abuser or neglector and the victim child or children reported include demographic information, type of abuse or neglect, and date of the complaint.
3. The identifying information shall be retained based on the determined level of severity of the abuse or neglect pursuant to 22VAC40-705-110:
  - a. Eighteen years past the date of the complaint for all complaints determined by the local department to be founded as Level 1.
  - b. Seven years past the date of the complaint for all complaints determined by the local department to be founded as Level 2.
  - c. Three years past the date of the complaint for all complaints determined by the local department to be founded as Level 3.
4. Pursuant to § 63.2-1514 A of the Code of Virginia, all records related to founded, Level 1 dispositions of sexual abuse shall be maintained by the local department for a period of 25 years from the date of the complaint. This applies to all investigations with founded dispositions on or after July 1, 2010. This retention timeframe will not be reflected in the Central Registry past the purge dates set out in this subsection.

#### C. Family assessments.

1. The record of the family assessment shall be purged three years after the date of the complaint or report if there are no subsequent complaints or reports regarding the individual against whom allegations of abuse or neglect were made or regarding the same child in those three years.
2. The individual against whom allegations of abuse or neglect were made may request in writing that both the local department and the department shall immediately purge the record upon presentation of a certified copy of a court order that there has been a civil action that determined that the complaint or report was made in bad faith or with malicious intent pursuant to § 63.2-1514 of the Code of Virginia.

D. In all family assessments or investigations, if the individual against whom the allegations of abuse or neglect is involved in any subsequent complaint or report, the information from all complaints or reports shall be maintained until the last purge date has been reached.

#### 22VAC40-705-140. Notification of findings.

A. Upon completion of the investigation or family assessment the local child protective services worker shall make notifications as provided in this section.

B. Individual against whom allegations of abuse or neglect were made.

1. When the disposition is unfounded, the child protective services worker shall inform the individual against whom allegations of abuse or neglect were made of this finding. This notification shall be in writing with a copy to be maintained in the case record. The individual against whom allegations of abuse or neglect were made shall be informed that he may have access to the case record and that the case record shall be retained by the local department for ~~one year~~ three years unless requested in writing by such individual that the local department retain the record for up to an additional two years.

- a. If the individual against whom allegations of abuse or neglect were made or the subject child is involved in subsequent complaints, the information from all complaints shall be retained until the last purge date has been reached.
  - b. The local worker shall notify the individual against whom allegations of abuse or neglect were made of the procedures set forth in § 63.2-1514 of the Code of Virginia regarding reports or complaints alleged to be made in bad faith or with malicious intent.
  - c. In accordance with § 32.1-283.1 D of the Code of Virginia when an unfounded disposition is made in an investigation that involves a child death, the child protective services worker shall inform the individual against whom allegations of abuse or neglect were made that the case record will be retained for the longer of ~~12 months~~ three years or until the State Child Fatality Review Team has completed its review of the case.
2. When the abuser or neglecter in a founded disposition is a foster parent of the victim child, the local department shall place a copy of this notification letter in the child's foster care record and in the foster home provider record.
  3. When the abuser or neglecter in a founded disposition is a full-time, part-time, permanent, or temporary employee of a school division, the local department shall notify the relevant school board of the founded complaint pursuant to § 63.2-1505 B 7 of the Code of Virginia.
  4. The local department shall notify the Superintendent of Public Instruction when an individual holding a license issued by the Board of Education is the subject of a founded complaint of child abuse or neglect and shall transmit identifying information regarding such individual if the local department knows the person holds a license issued by the Board of Education and after all rights to any appeal provided by § 63.2-1526 of the Code of Virginia have been exhausted.
  5. No disposition of founded or unfounded shall be made in a family assessment. At the completion of the family assessment the subject of the report shall be notified orally and in writing of the results of the assessment. The child protective services worker shall notify the individual against whom allegations of abuse or neglect were made of the procedures set forth in § 63.2-1514 of the Code of Virginia regarding reports or complaints alleged to be made in bad faith or with malicious intent.

C. Subject child's parents or guardian.

1. When the disposition is unfounded, the child protective services worker shall inform the parents or guardian of the subject child in writing, when they are not the individuals against whom allegations of child abuse or neglect were made, that the investigation involving their child resulted in an unfounded disposition and the length of time the child's name and information about the case will be maintained. The child protective services worker shall file a copy in the case record.
2. When the disposition is founded, the child protective services worker shall inform the parents or guardian of the child in writing, when they are not the abuser or neglecter, that the complaint involving their child was determined to be founded and the length of time the child's name and information about the case will be retained in the Central Registry. The child protective services worker shall file a copy in the case record.
3. When the founded disposition of abuse or neglect does not name the parents or guardians of the child as the abuser or neglecter and when the abuse or neglect occurred in a licensed or unlicensed child day center, a licensed, registered, or approved family day home, a private or public school, or a children's residential

facility, the parent or guardian must be consulted and must give permission for the child's name to be entered into the Central Registry pursuant to § 63.2-1515 of the Code of Virginia.

#### D. Complainant.

1. When an unfounded disposition is made, the child protective services worker shall notify the complainant, when known, in writing that the complaint was investigated and determined to be unfounded. The worker shall file a copy in the case record.
2. When a founded disposition is made, the child protective services worker shall notify the complainant, when known, in writing that the complaint was investigated and necessary action was taken. The local worker shall file a copy in the case record.
3. When a family assessment is completed, the child protective services worker shall notify the complainant, when known, that the complaint was assessed and necessary action taken.

#### E. Family Advocacy Program of the United States Armed Forces.

1. Pursuant to § 63.2-1503 N of the Code of Virginia, in all investigations with a founded disposition or family assessment that involve an active duty member of the United States Armed Forces or members of his household, information regarding the disposition, type of abuse or neglect, and the identity of the abuser or neglecter shall be provided to the appropriate Family Advocacy Program representative. This notification shall be made in writing within 30 days after the administrative appeal rights of the abuser or neglecter have been exhausted or forfeited.
2. The military member shall be advised that this information regarding the founded disposition or family assessment is being provided to the Family Advocacy Program representative and shall be given a copy of the written notification sent to the Family Advocacy Program representative.
3. In accordance with § 63.2-105 of the Code of Virginia, when an active duty member of the United States Armed Forces or a member of his household is involved in an investigation, family assessment, or provision of services case, any information regarding child protective services reports, complaints, investigations, family assessments, and follow up may be shared with the appropriate Family Advocacy Program representative of the United States Armed Forces when the local department determines such release to be in the best interest of the child. In these situations, coordination between child protective services and the Family Advocacy Program is intended to facilitate identification, treatment, and service provision to the military family.
4. When needed by the Family Advocacy Program representative to facilitate treatment and service provision to the military family, any other additional information not prohibited from being released by state or federal law or regulation shall also be provided to the Family Advocacy Program representative when the local department determines such release to be in the best interest of the child.