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CRIMES AND OFFENSES GENERALLY: CRIMES AGAINST THE PERSON – CRIMINAL SEXUAL ASSAULT.

WELFARE (SOCIAL SERVICES): CHILD ABUSE AND NEGLECT.

Duty of teacher or other school administrator who suspects (1) that 18-year-old student is having sexual relationship with 13- or 14-year-old student, or (2) that two students, who are minors and whose age difference falls within purview of § 18.2-63, are engaging in sexual conduct, to report knowledge of such activity to local department of social services for investigation.

The Honorable Raymond C. Robertson
Commonwealth's Attorney for the City of Staunton
December 27, 2001

You ask whether a teacher or school administrator, who has knowledge (1) that an eighteen-year-old student is having a sexual relationship with a thirteen- or fourteen-year-old student in violation of § 18.2-63 of the *Code of Virginia*, or (2) that two minor students whose ages fall within the purview of § 18.2-63 are engaged in sexual conduct in violation of that statute, is required to report such activity as child abuse and neglect pursuant to §§ 63.1-248.2 and 63.1-248.3.

Section 18.2-63 provides, in part:

If any person carnally knows, without the use of force, a child thirteen years of age or older but under fifteen years of age, such person shall be guilty of a Class 4 felony.

However, if such child is thirteen years of age or older but under fifteen years of age and consents to sexual intercourse and the accused is a minor and such consenting child is three years or more the accused's junior, the accused shall be guilty of a Class 6 felony. If such consenting child is less than three years the accused's junior, the accused shall be guilty of a Class 4 misdemeanor.

Section 63.1-248.6 requires a local department of social services to investigate allegations of abuse or neglect of a child.¹ Section 63.1-248.2 defines the terms applicable to such investigation. Specifically, § 63.1-248.2 defines an "abused or neglected child" as

any child less than eighteen years of age:

....

4. Whose parents or other person responsible for his care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law

Section 63.1-248.3 designates the persons who, in their professional or official capacity, have reason to suspect that a child is abused or neglected pursuant to § 63.1-248.2, and who are required to report incidents of suspected abuse or neglect. Specifically included in this statute are "teacher[s] or other person[s] employed in a public or private school."²

A 1989 opinion of the Attorney General concludes that the responsibility of the local department of social services in child abuse and neglect matters is limited to the investigation of allegations of acts committed by a parent or other person responsible for the care of a child.³ The 1990 Session of the General Assembly enacted an amendment to § 63.1-248.2, which provides:

Nothing in this section shall relieve any person specified in § 63.1-248.3 from making reports required in that section, regardless of the identity of the person suspected to have caused such abuse or neglect.^[4]

The General Assembly is presumed to have had knowledge of the Attorney General's interpretations of statutes, and its failure to amend a statute that this Office has interpreted in an official opinion indicates legislative acquiescence in the Attorney General's view.⁵ In this instance, however, the General Assembly did not acquiesce in the Attorney General's conclusion, but amended § 63.1-248.2 in direct response to the result reached in the 1989 opinion.⁶

Additionally, when new provisions are added to existing legislation by an amendatory act, a presumption arises that a change in the law was intended.⁷ In this instance, the General Assembly's amendment indicates a legislative intent that the definition of "abused or neglected child" set forth in § 63.1-248.2 not be limited to acts committed by a parent or other person responsible for his care; rather, the amendment makes clear that the identity of the person suspected of committing the act is irrelevant with respect to the obligation of a person falling within the purview of § 63.1-248.3 to make a report of such abuse or neglect. It is my opinion, therefore, that the 1990 amendment to § 63.1-248.2 effectively overrules the 1989 opinion.

Thus, it is also my opinion that, in the instant case, a teacher or school administrator who suspects that an eighteen-year-old student is having a sexual relationship with a thirteen- or fourteen-year-old student in violation of § 18.2-63 has a duty to report the matter to the local department of social services in accordance with §§ 63.1-248.2 and 63.1-248.3. Similarly, it is my opinion that a teacher or school administrator who suspects that two students, who are minors and whose age difference falls within the purview of § 18.2-63, are engaging in sexual conduct, and thus are in violation of § 18.2-63, has a duty to report his or her knowledge of such activity in accordance with §§ 63.1-248.2 and 63.1-248.3.

¹See also Va. Code Ann. § 63.1-248.6:01 (Michie Supp. 2001) (explaining procedures for investigations by local departments of social services).

²See Va. Code Ann. § 63.1-248.3(A)(5) (Michie Supp. 2001).

³1989 Op. Va. Att'y Gen. 354, 356.

⁴1990 Va. Acts ch. 760, at 1185, 1185.

⁵See *Deal v. Commonwealth*, 224 Va. 618, 622, 299 S.E.2d 346, 348 (1983).

⁶*Compare* 1992 Op. Va. Att'y Gen. 42, 44 (noting that General Assembly's amendment in direct response to result reached in 1990 opinion effectively overrules opinion regarding fee collected by circuit court clerk in criminal or traffic cases).

⁷See *Wisniewski v. Johnson*, 223 Va. 141, 144, 286 S.E.2d 223, 224-25 (1982); Op. Va. Att'y Gen.: 1992, *supra*, at 44; 1990 at 156, 157; 1986-1987 at 272, 273.

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