DUTY TO REPORT SUSPECTED CHILD ABUSE OR NEGLECT BY PRIVATE ORGANIZATIONS – STATUTORY CONSTRUCTION – DEFINITIONS – PROFESSIONS AND OCCUPATIONS – LABOR AND EMPLOYMENT.

Virginia Code § 63.1-248.3.A(12) imposes a duty on volunteer and professional Boy Scout leaders, who have reason to suspect that a child has been abused or neglected, to report the matter to the Department of Social Services.

The Honorable Clifton A. Woodrum
Member, House of Delegates
June 27, 2002

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the Code of Virginia.

Issue Presented

You ask whether volunteer and professional Boy Scout leaders must report suspected child abuse or neglect pursuant to § 63.1-248.3.

Response

It is my opinion that § 63.1-248.3(A)(12) imposes a duty on volunteer and professional Boy Scout leaders, who have reason to suspect that a child is abused or neglected, to report the matter to the local department of social services or the Department of Social Services' hotline, as required by § 63.1-248.3(A).

Facts

You relate that a local council of the Boy Scouts of America inquired regarding the applicability of § 63.1-248.3 to volunteer leaders, such as Scoutmasters or Cub Scout den mothers, and to professional Scouters who may learn of facts or suspicions of child abuse or neglect from volunteers or otherwise in the conduct of their duties for the organization. You note that volunteer Scout leaders are required to report suspected child abuse or neglect to the Council Executive who then reports the matter to the National Council of the Boy Scouts of America. Finally, you state that Scout volunteers must report to the local Scout council suspected abuse whether the abuse occurs in the Scout program, at home, or elsewhere.

Applicable Law and Discussion

Section 63.1-248.3(A) lists the "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 … to the local department of [social services] … or to the Department of Social Services’ toll-free child abuse and neglect hotline." Section 63.1-248.3(A)(12) requires suspected child abuse or neglect to
be reported by "[a]ny person associated with or employed by any private organization responsible for the care, custody or control of children." It is therefore necessary to determine (i) whether the Boy Scouts of America is a private organization responsible for the "care, custody or control of children," and (ii) whether volunteer Scout leaders are "associated with," and professional Scout leaders are "employed by," the Boy Scouts of America.

The Boy Scouts of America is a private organization. Boys between 7 and 20 years of age may participate in scouting programs. Depending on the scout's age, he may participate in programs that emphasize leadership, community, family understanding, character development, citizenship training, personal fitness and outdoor activities. Scout meetings and activities take place under the supervision of adult scout leaders.

The terms "care," "custody" or "control," as used in § 63.1-248.3(A)(12) are not defined under Virginia law. "When a statute does not contain an express definition of a term, … the intent of the legislature [may be inferred] from the plain meaning of the words used." Generally, the term "care" means "painstaking or watchful attention." The term "custody" has been "broadly defined as '[t]he care, control and maintenance of a child.'" "[T]he Supreme Court of Virginia has rejected limiting the definition of 'custody' to legal custody." Finally, the word "control" means "to exercise restraining or directing influence over," and it is "synonymous with "manage.""

In order for § 63.1-248.3(A)(12) to impose a reporting duty, a volunteer Scout leader must be "associated with" the Boy Scouts. To become a volunteer Scout leader, an adult must apply to and be accepted by a local office of the Boy Scouts of America. It is therefore clear that a volunteer Scout leader is "associated with" the Boy Scouts of America. For the purposes of this opinion, I assume the term "professional Scout leader" refers to those individuals who are employed and paid by the Boy Scouts of America. Accordingly, professional Scout leaders clearly are subject to the reporting requirement of § 63.1-248.3(A)(12).

Section 63.1-248.3(A)(12) imposes a duty on volunteer and professional Scout leaders when those persons have the care, custody or control of a child. Given the nature of scouting activities, it is evident that volunteer and professional Scout leaders, during those activities, have either the care, custody or control of the child. Therefore, the statute imposes a reporting duty on volunteer and professional Scout leaders.

Please note that a Scout leader making a report of suspected abuse pursuant to § 63.1-248.5 "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."

Conclusion

Accordingly, it is my opinion that § 63.1-248.3(A)(12) imposes a duty on volunteer and professional Boy Scout leaders, who have reason to suspect that a child has been abused or neglected, to report the matter to the local department of social services or the Department of Social Services’ hotline, as required by § 63.1-248.3(A).
1Boy Scouts of America v. Dale, 530 U.S. 640, 644 (2000) ("The Boy Scouts is a private, not-for-profit organization engaged in instilling its system of values in young people.")

2See the National Council of the Boy Scouts of America Web site, www.scouting.org. Boys 7-to-10 years of age may participate in scouting programs such as Tiger Cubs, Cub Scouts or Webelos Scouts, depending on their age; boys 11-to-17 years of age may participate in Boy Scouts. Id

3Id.

4Id.


9Miriam Webster’s Collegiate Dictionary, supra note 6, at 252.


11See Web site cited supra note 2.

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