

VIRGINIA ACTS OF ASSEMBLY -- 2004 RECONVENED SESSION

CHAPTER 1011

An Act to amend and reenact §§ 63.2-1603 through 63.2-1606, 63.2-1608, 63.2-1609, and 63.2-1610 of the Code of Virginia, and to repeal § 63.2-1607 of the Code of Virginia, relating to adult protective services; penalties.

[S 318]

Approved April 21, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1603 through 63.2-1606, 63.2-1608, 63.2-1609, and 63.2-1610 of the Code of Virginia are amended and reenacted as follows:

§ 63.2-1603. Protection of adults; definitions.

As used in this article:

"Adult" means any person ~~eighteen~~ 60 years of age or older, or any person 18 years of age and older who is incapacitated and any qualifying person sixty years of age and older, who, in either case, both of whom reside resides in the Commonwealth; provided, however, "adult" may include incapacitated or qualifying nonresidents who are temporarily in the Commonwealth and who are in need of temporary or emergency protective services.

"Emergency" means that an adult is living in conditions that present a clear and substantial risk of death or immediate and serious physical harm to himself or others.

"Incapacitated person" means any adult who is impaired by reason of mental illness, mental retardation, physical illness or disability, advanced age or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate or carry out responsible decisions concerning his or her well-being.

§ 63.2-1604. Establishment of Adult Protective Services Unit; powers and duties.

There is hereby created the Adult Protective Services Unit within the Adult Services Program in the Department, which, *in coordination with adult protective services programs in the local departments*, shall have the following powers and duties:

1. To support, strengthen, and evaluate adult protective services programs at local departments;
2. To assist in developing and implementing programs aimed at responding to respond to and preventing prevent adult abuse, neglect or exploitation;
3. To prepare, disseminate, and present educational programs and materials on adult abuse, neglect and exploitation to mandated reporters and the public;
4. To develop and provide educational programs and materials to persons who are required by law to make reports of adult abuse, neglect, and exploitation under this chapter;
5. To establish minimum standards of training and provide educational opportunities to qualify social workers in the field of adult protective services to determine whether reports of adult abuse, neglect, or exploitation are substantiated. The Department shall establish, and the Board shall approve, a uniform training program for adult protective services workers in the Commonwealth. All adult protective services workers shall complete such training within one year from the date of implementation of the training program or within the first year of their employment;
- 6 5. To develop policies and procedures to guide the work of persons in the field of adult protective services;
- 7 6. To prepare and disseminate statistical information on adult protective services in Virginia;
- 8 7. To operate the adult protective services 24-hour toll-free hotline and provide training and technical assistance to the adult protective services twenty-four hour toll-free hotline staff; and
- 9 8. To provide coordination among the adult protective services program and other state social services, medical and legal agencies; and
9. To work collaboratively with other agencies in the Commonwealth to facilitate the reporting and investigation of suspected adult abuse, neglect, or exploitation.

§ 63.2-1605. Protective services for adults by local departments.

A. Each local board, to the extent that federal or state matching funds are made available to each locality, shall provide, subject to supervision of the Commissioner and in accordance with regulations adopted by the Board, adult protective services for persons adults who are found to be abused, neglected or exploited and who meet one of the following criteria: (i) the person adult is sixty 60 years of age or older or (ii) the person adult is 18 years of age or older and is incapacitated and has no relative or other person able, available and willing to provide guidance, supervision or other needed care. The requirement to provide such services shall not limit the right of any individual to refuse to accept any of the services so offered, except as provided in § 63.2-1608.

B. Upon receipt of the report pursuant to § 63.2-1606, the local department shall determine the

validity of such report and shall initiate an investigation within 24 hours of the time the report is received in the local department. Local departments shall consider valid any report meeting all of the following criteria: (i) the subject of the report is an adult as defined in this article, (ii) the report concerns a specific adult and there is enough information to locate the adult, and (iii) the report describes the circumstances of the alleged abuse, neglect, or exploitation.

C. The local department shall refer any appropriate matter and all relevant documentation to the appropriate licensing, regulatory, or legal authority for administrative action or criminal investigation.

D. If a local department is denied access to an adult for whom there is reason to suspect the need for adult protective services, then the local department may petition the circuit court for an order allowing access or entry or both. Upon a showing of good cause supported by an affidavit or testimony in person, the court may enter an order permitting such access or entry.

E. In any case of suspected adult abuse, neglect, or exploitation, local departments, with the informed consent of the adult or his legal representative, may take or cause to be taken photographs, video recordings, or appropriate medical imaging of the adult and his environment as long as such measures are relevant to the investigation and do not conflict with § 18.2-386.1.

F. Local departments shall foster the development, implementation, and coordination of adult protective services to prevent adult abuse, neglect, and exploitation.

G. Local departments shall not investigate allegations of abuse, neglect, or exploitation of adults incarcerated in state correctional facilities.

H. Local departments shall notify the local law-enforcement agency where the adult resides, or where the alleged abuse, neglect, or exploitation took place, or if these places are unknown, then where the alleged abuse, neglect, or exploitation was discovered, when in receipt of a report describing any of the following:

1. Sexual abuse as defined in § 18.2-67.10;
2. Death, serious bodily injury or disease as defined in § 18.2-369 that is believed to be the result of abuse or neglect; or
3. Any other criminal activity involving abuse or neglect that places the adult in imminent danger of death or serious bodily harm.

1. The report and evidence received by the local department and any written findings, evaluations, records, and recommended actions shall be confidential and shall be exempt from disclosure requirements of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that such information may be disclosed to persons having a legitimate interest in the matter in accordance with §§ 63.2-102 and 63.2-104 and pursuant to official interagency agreements or memoranda of understanding between state agencies.

§ 63.2-1606. Protection of aged or incapacitated adults; mandated and voluntary reporting.

A. Matters giving reason to suspect the abuse, neglect or exploitation of adults shall be reported by immediately upon the reporting person's determination that there is such reason to suspect. Medical facilities inspectors of the Department of Health are exempt from reporting suspected abuse immediately while conducting federal inspection surveys in accordance with § 1864 of Title XVIII and Title XIX of the Social Security Act, as amended, of certified nursing facilities as defined in § 32.1-123. Reports shall be made to the local department or the adult protective services hotline in accordance with requirements of this section by the following persons acting in their professional capacity:

1. Any person licensed to practice medicine or any of the healing arts, any hospital resident or intern, any person employed in the nursing profession, certified, or registered by health regulatory boards listed in § 54.1-2503, with the exception of persons licensed by the Board of Veterinary Medicine;

2. Any mental health services provider as defined in § 54.1-2400.1;

3. Any emergency medical services personnel certified by the Board of Health pursuant to § 32.1-111.5;

4. Any guardian or conservator of an adult;

5. Any person employed by or contracted with a public or private agency or facility and working with adults, in an administrative, supportive or direct care capacity;

6. Any person providing full-time or part-time full, intermittent or occasional care to adults an adult for pay on a regularly scheduled basis, any person employed as a social worker, any mental health professional and any compensation, including but not limited to, companion, chore, homemaker, and personal care workers; and

7. Any law-enforcement officer, in his professional or official capacity, who has reason to suspect that an adult is an abused, neglected or exploited adult.

B. The report shall be made immediately in accordance with subsection A to the local department of the county or city wherein the adult resides or wherein the adult abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline. Nothing in this section shall be construed to eliminate or supersede any other obligation to report as required by law. If neither locality is known, then the report shall be made to the local department of the county or city where the adult abuse, neglect, or exploitation was discovered. If the information is received by a staff member, resident,

intern or nurse in the course of professional services in a hospital or similar institution, such person may, in place of the report, immediately notify the person in charge of the institution or department, or his designee, who shall make such report forthwith. If a person required to report under this section receives information regarding abuse, neglect or exploitation while providing professional services in a hospital, nursing facility or similar institution, then he may, in lieu of reporting, notify the person in charge of the institution or his designee, who shall report such information, in accordance with the institution's policies and procedures for reporting such matters, immediately upon his determination that there is reason to suspect abuse, neglect or exploitation. Any person required to make the report or notification required by this subsection shall do so either orally or in writing and shall disclose all information that is the basis for the suspicion of adult abuse, neglect or exploitation. Upon request, any person required to make the report shall make available to the adult protective services worker and the local department investigating the reported case of adult abuse, neglect or exploitation any information, records or reports which document the basis for the report. All persons required to report suspected adult abuse, neglect or exploitation who maintain a record of a person who is the subject of such a report shall cooperate with the investigating adult protective services worker of a local department and shall make information, records and reports which are relevant to the investigation available to such worker to the extent permitted by state and federal law. Criminal investigative reports received from law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be subject to public disclosure.

B. The report required by subsection A shall be reduced to writing within seventy-two hours by the director of the local department on a form prescribed by the Board.

C. Any person required to make a report pursuant to subsection A who has reason to suspect that an adult has been sexually abused as that term is defined in § 18.2-67.10, and any person in charge of a hospital or similar institution, or a department thereof, who receives such information from a staff member, resident, intern or nurse, also shall immediately report the matter, either orally or in writing, to the local law-enforcement agency where the adult resides or the sexual abuse is believed to have occurred, or if neither locality is known, then where the abuse was discovered. The person making the report shall disclose and, upon request, make available to the law-enforcement agency all information forming the basis of the report.

D. Any financial institution that staff who suspects that an adult customer has been exploited financially may report such suspected exploitation to the local department of the county or city wherein the adult resides or wherein the exploitation is believed to have occurred or to the adult protective services hotline. Such a complaint may be oral or in writing. For purposes of this section, a financial institution staff means any employee of a bank, savings institution, credit union, securities firm, accounting firm, or insurance company.

E. Any person other than those specified in subsection A who suspects that an adult is an abused, neglected or exploited adult may report the matter to the local department of the county or city wherein the adult resides or wherein the abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline. Such a complaint may be oral or in writing.

F. Any person who makes a report or provides records or information pursuant to subsection A, C or D or E, or who testifies in any judicial proceeding arising from such report, records or information, or who takes or causes to be taken with the adult's or the adult's legal representative's informed consent photographs, video recordings, or appropriate medical imaging of the adult who is subject of a report shall be immune from any civil or criminal liability on account of such report, records, information, photographs, video recordings, appropriate medical imaging or testimony, unless such person acted in bad faith or with a malicious purpose.

G. An employer of a mandated reporter shall not prohibit a mandated reporter from reporting directly to the local department or to the adult protective services hotline. Employers whose employees are mandated reporters shall notify employees upon hiring of the requirement to report.

H. Any person 14 years of age or older who makes or causes to be made a report of adult abuse, neglect, or exploitation that he knows to be false shall be guilty of a Class 4 misdemeanor. Any subsequent conviction of this provision shall be a Class 2 misdemeanor.

All law-enforcement departments and other state and local departments, agencies, authorities and institutions shall cooperate with each adult protective services worker of a local department in the detection and prevention of adult abuse, neglect or exploitation.

I. Any person who is found guilty of failing fails to make a required report or notification pursuant to subsection A or C, within twenty-four hours of having the reason to suspect abuse, shall be fined subject to a civil penalty of not more than \$500 for the first failure and not less than \$100 nor more than \$1,000 for any subsequent failures. Civil penalties under subdivision A 7 shall be determined by a court of competent jurisdiction, in its discretion. All other civil penalties under this section shall be determined by the Commissioner or his designee. The Board shall establish by regulation a process for imposing and collecting civil penalties, and a process for appeal of the imposition of such penalty pursuant to § 2.2-4026 of the Administrative Process Act.

J. Any mandated reporter who has reasonable cause to suspect that an adult died as a result of

abuse or neglect shall immediately report such suspicion to the appropriate medical examiner and to the appropriate law-enforcement agency, notwithstanding the existence of a death certificate signed by a licensed physician. The medical examiner and the law-enforcement agency shall receive the report and determine if an investigation is warranted. The medical examiner may order an autopsy. If an autopsy is conducted, the medical examiner shall report the findings to law enforcement, as appropriate, and to the local department or to the adult protective services hotline.

J. No person or entity shall be obligated to report any matter if the person or entity has actual knowledge that the same matter has already been reported to the local department or to the adult protective services hotline.

K. All law-enforcement departments and other state and local departments, agencies, authorities and institutions shall cooperate with each adult protective services worker of a local department in the detection, investigation and prevention of adult abuse, neglect and exploitation.

§ 63.2-1608. Involuntary adult protective services.

A. If an adult lacks the capacity to consent to receive adult protective services, these services may be ordered by a court on an involuntary basis through an emergency order pursuant to § 63.2-1609 or ~~through the appointment of~~ by a guardian or conservator appointed pursuant to Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1.

B. In ordering involuntary adult protective services, the court shall authorize only that intervention which it finds to be least restrictive of the adult's liberty and rights, while consistent with his welfare and safety. The basis for such finding shall be stated in the record by the court.

C. The adult shall not be required to pay for involuntary adult protective services, unless such payment is authorized by the court upon a showing that the person is financially able to pay. In such event the court shall provide for reimbursement of the actual costs incurred by the local department in providing adult protective services, excluding administrative costs.

§ 63.2-1609. Emergency order for adult protective services.

A. Upon petition by the local department to the circuit court, the court may issue an order authorizing the provision of adult protective services on an emergency basis to an adult after finding on the record, based on a ~~greater weight~~ *preponderance* of the evidence, that:

1. The adult is incapacitated;
2. An emergency exists;
3. The adult lacks the capacity to consent to receive adult protective services; and

4. The proposed order is substantially supported by the findings of the local department ~~which that~~ has investigated the case, or if not so supported, there are compelling reasons for ordering services.

B. In issuing an emergency order, the court shall adhere to the following limitations:

1. Only such adult protective services as are necessary to improve or correct the conditions creating the emergency shall be ordered, and the court shall designate the approved services in its order. In ordering adult protective services the court shall consider the right of a person to rely on nonmedical remedial treatment in accordance with a recognized religious method of healing in lieu of medical care.

2. The court shall specifically find in the emergency order whether hospitalization or a change of residence is necessary. Approval of the hospitalization or change of residence shall be stated in the order. No ~~person~~ *adult* may be committed to a mental health facility under this section.

3. Adult protective services may be provided through an appropriate court order only for a period of ~~five~~ 15 days. The original order may be renewed once for a five-day period upon a showing to the court that continuation of the original order is necessary to remove the emergency.

4. In its order the court shall appoint the petitioner or another interested person, as temporary guardian of the adult with responsibility for the ~~person's~~ *adult's* welfare and authority to give consent for the ~~person~~ *adult* for the approved adult protective services until the expiration of the order.

5. The issuance of an emergency order and the appointment of a temporary guardian shall not deprive the adult of any rights except to the extent provided for in the order or appointment.

C. The petition for an emergency order shall set forth the name, address, and interest of the petitioner; the name, age and address of the adult in need of adult protective services; the nature of the emergency; the nature of the ~~person's disability~~ *adult's incapacity*, if determinable; the proposed adult protective services; the petitioner's reasonable belief, together with facts supportive thereof, as to the existence of the facts stated in subdivisions A 1 through A 4; and facts showing the petitioner's attempts to obtain the adult's consent to the services and the outcomes of such attempts.

D. Written notice of the time, date and place for the hearing shall be given to the ~~person~~ *adult*, to his spouse, or if none, to his nearest known next of kin, and a copy of the petition shall be attached. Such notice shall be given at least ~~twenty-four~~ 24 hours prior to the hearing for emergency intervention. The court may waive the ~~twenty-four-hour~~ 24-hour notice requirement upon showing that (i) immediate and reasonably foreseeable physical harm to the ~~person~~ *adult* or others will result from the ~~twenty-four-hour~~ 24-hour delay, and (ii) reasonable attempts have been made to notify the adult, his spouse, or if none, his nearest known next of kin.

E. Upon receipt of a petition for an emergency order for adult protective services, the court shall hold a hearing. The adult who is the subject of the petition shall have the right to be present and be

represented by counsel at the hearing. If it is determined that the ~~person~~ *adult* is indigent, or, in the determination of the judge, lacks capacity to waive the right to counsel, the court shall locate and appoint a guardian ad litem. If the ~~person~~ *adult* is indigent, the cost of the proceeding shall be borne by the Commonwealth. If the ~~person~~ *adult* is not indigent, the *court may order that the* cost of the proceeding shall be borne by such ~~person~~ *adult*. This hearing shall be held no earlier than ~~twenty-four~~ 24 hours after the notice required in subsection D has been given, unless such notice has been waived by the court.

F. The adult, the temporary guardian or any interested person may petition the court to have the emergency order set aside or modified at any time there is evidence that a substantial change in the circumstances of the ~~person~~ *adult* for whom the emergency services were ordered has occurred.

G. Where adult protective services are rendered on the basis of an emergency order, the temporary guardian shall submit to the court a report describing the circumstances thereof including the name, place, date and nature of the services provided. This report shall become part of the court record. Such report shall be confidential and open only to such persons as may be directed by the court.

H. If the person continues to need adult protective services after the renewal order provided in subdivision B 3 has expired, the temporary guardian or the local department shall immediately petition the court to appoint a guardian pursuant to Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1.

§ 63.2-1610. Voluntary adult protective services.

A. ~~Any adult may receive adult~~ *The local department shall provide or arrange for* protective services; ~~provided or arranged for by the director~~ if the adult requests or affirmatively consents to receive these services. If the ~~person~~ *adult* withdraws or refuses consent, the services shall not be provided.

B. No person shall interfere with the provision of adult protective services to an (i) adult who requests or consents to receive such services, *or (ii) for whom consent has been lawfully given.* In the event that interference occurs on a continuing basis, the director may petition the court *of competent jurisdiction* to enjoin such interference.

C. The actual costs incurred by the local department in providing adult protective services shall be borne by the local department, unless the adult *or his representative* agrees to pay for them or a court ~~authorizes orders~~ the local department to receive reasonable reimbursement for the adult protective services, excluding administrative costs, from the ~~person's~~ *adult's* assets after a finding that the adult is financially able to make such payment.

2. That § 63.2-1607 of the Code of Virginia is repealed.

3. That the Department of Social Services shall develop a plan and cost estimate to prepare, disseminate and present educational programs and materials on adult abuse, neglect and exploitation to all categories of newly mandated reporters under § 63.2-1604 of this act by November 1, 2004, and that the penalty provisions of subsection H of § 63.2-1606 shall not apply to such newly mandated reporters until the delivery of such training. The Commissioner shall report to the Governor and the General Assembly on the plan and estimated costs no later than November 1, 2004.

4. That the Secretary of Health and Human Resources, in consultation with the Departments of Social Services and Health and other state and local entities as appropriate, shall develop a model protocol and procedures for, as well as cost estimates for the operation of, adult fatality review teams to review suspicious deaths of vulnerable adults and provide ongoing surveillance of suspicious adult fatalities in order to create a body of information to help prevent future fatalities. The Secretary shall report to the Governor and General Assembly on the model protocol and cost estimates no later than November 1, 2004.