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SENATE BILL NO. 543

Offered January 10, 2018

Prefiled January 9, 2018

A BILL to amend and reenact § 63.2-1609 of the Code of Virginia, relating to emergency order for adult protective services; temporary conservator.

Patron—Mason

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-1609 of the Code of Virginia is amended and reenacted as follows:

§ 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 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 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 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 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.

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

5. When applicable, the court shall appoint the petitioner or another interested person as temporary conservator of the adult with responsibility and authority limited to managing the adult's estate and financial affairs related to the approved adult protective services until the expiration of the order.

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

7. The court shall set the bond of the temporary guardian and the bond and surety, if any, of the temporary conservator.

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 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 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 24 hours prior to the hearing for emergency intervention. The court may waive the 24-hour notice requirement upon showing that (i) immediate and reasonably foreseeable physical harm to the adult or others will result from the 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 adult is indigent, or, in the determination of the judge, lacks capacity to waive the right to counsel, the court shall locate and

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59 appoint a guardian ad litem. If the adult is indigent, the cost of the proceeding shall be borne by the  
60 Commonwealth. If the adult is not indigent, the court may order that the cost of the proceeding shall be  
61 borne by such adult. This hearing shall be held no earlier than 24 hours after the notice required in  
62 subsection D has been given, unless such notice has been waived by the court.

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

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

72 H. If the person continues to need adult protective services after the renewal order provided in  
73 subdivision B 3 has expired, the temporary guardian, *temporary conservator*, or ~~the~~ local department  
74 shall immediately petition the court to appoint a guardian *and, if applicable, a conservator* pursuant to  
75 Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2.