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## SENATE BILL NO. 1570

Offered January 9, 2019

Prefiled January 9, 2019

A *BILL to amend and reenact §§ 2.2-3802 and 63.2-1605 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 63.2-1605.1 and by adding in Article 2 of Chapter 16 of Title 63.2 sections numbered 63.2-1610.1 through 63.2-1610.4, relating to adult protective services; central registry.*

Patron—Lewis

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 2.2-3802 and 63.2-1605 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 63.2-1605.1 and by adding in Article 2 of Chapter 16 of Title 63.2 sections numbered 63.2-1610.1 through 63.2-1610.4 as follows:

**§ 2.2-3802. Systems to which chapter inapplicable.**

The provisions of this chapter shall not apply to personal information systems:

1. Maintained by any court of the Commonwealth;
2. Which may exist in publications of general circulation;
3. Contained in the Criminal Justice Information System as defined in §§ 9.1-126 through 9.1-137 or in the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, except to the extent that information is required to be posted on the Internet pursuant to § 9.1-913;
4. Contained in the Virginia Juvenile Justice Information System as defined in §§ 16.1-222 through 16.1-225;
5. Maintained by agencies concerning persons required by law to be licensed in the Commonwealth to engage in the practice of any profession, in which case the names and addresses of persons applying for or possessing the license may be disseminated upon written request to a person engaged in the profession or business of offering professional educational materials or courses for the sole purpose of providing the licensees or applicants for licenses with informational materials relating solely to available professional educational materials or courses, provided the disseminating agency is reasonably assured that the use of the information will be so limited;
6. Maintained by the Parole Board, the Crime Commission, the Judicial Inquiry and Review Commission, the Virginia Racing Commission, and the Virginia Alcoholic Beverage Control Authority;
7. Maintained by any of the following and that deal with investigations and intelligence gathering related to criminal activity:
  - a. The Department of State Police;
  - b. The police department of the Chesapeake Bay Bridge and Tunnel Commission;
  - c. Police departments of cities, counties, and towns;
  - d. Sheriff's departments of counties and cities;
  - e. Campus police departments of public institutions of higher education as established by Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1; and
  - f. The Division of Capitol Police.
8. Maintained by local departments of social services regarding alleged cases of child abuse or neglect while such cases are also subject to an ongoing criminal prosecution;
9. Maintained by the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1;
10. Maintained by the Virginia Tourism Authority in connection with or as a result of the promotion of travel or tourism in the Commonwealth, in which case names and addresses of persons requesting information on those subjects may be disseminated upon written request to a person engaged in the business of providing travel services or distributing travel information, provided the Virginia Tourism Authority is reasonably assured that the use of the information will be so limited;
11. Maintained by the Division of Consolidated Laboratory Services of the Department of General Services and the Department of Forensic Science, which deal with scientific investigations relating to criminal activity or suspected criminal activity, except to the extent that § 9.1-1104 may apply;
12. Maintained by the Department of Corrections or the Office of the State Inspector General that deal with investigations and intelligence gathering by persons acting under the provisions of Chapter 3.2 (§ 2.2-307 et seq.);
13. Maintained by (i) the Office of the State Inspector General or internal audit departments of state

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59 agencies or institutions that deal with communications and investigations relating to the Fraud, Waste  
60 and Abuse Hotline or (ii) an auditor appointed by the local governing body of any county, city, or town  
61 or a school board that deals with local investigations required by § 15.2-2511.2;

62 14. Maintained by the Department of Social Services or any local department of social services  
63 relating to public assistance fraud investigations; and

64 15. Maintained by the Department of Social Services related to child welfare, adult services or adult  
65 protective services, or public assistance programs when requests for personal information are made to  
66 the Department of Social Services. Requests for information from these systems shall be made to the  
67 appropriate local department of social services, which is the custodian of that record. Notwithstanding  
68 the language in this section, an individual shall not be prohibited from obtaining information from ~~the~~  
69 *any central registry maintained by the Department of Social Services* in accordance with the provisions  
70 of § 63.2-1515 or 63.2-1610.2.

71 **§ 63.2-1605. Protective services for adults by local departments.**

72 A. Each local board, to the extent that federal or state matching funds are made available to each  
73 locality, shall provide, pursuant to regulations and subject to supervision of the Commissioner for Aging  
74 and Rehabilitative Services, adult protective services for adults who are found to be abused, neglected,  
75 or exploited and who meet one of the following criteria: (i) the adult is 60 years of age or older or (ii)  
76 the adult is 18 years of age or older and is incapacitated. The requirement to provide such services shall  
77 not limit the right of any individual to refuse to accept any of the services so offered, except as  
78 provided in § 63.2-1608.

79 B. Upon receipt of the report pursuant to § 63.2-1606, the local department shall determine the  
80 validity of such report and, *if the local department deems the report valid*, shall initiate an investigation  
81 *pursuant to § 63.2-1605.1* within 24 hours of the time the report is received in the local department.  
82 Local departments shall consider valid any report meeting all of the following criteria: (i) the subject of  
83 the report is an adult as defined in this article, (ii) the report concerns a specific adult and there is  
84 enough information to locate the adult, and (iii) the report describes the circumstances of the alleged  
85 abuse, neglect, or exploitation. *Local departments shall retain the records of all reports or complaints*  
86 *made and investigations conducted pursuant to this chapter in accordance with regulations adopted by*  
87 *the Board.*

88 C. The local department or the adult protective services hotline shall immediately refer the matter  
89 and all relevant documentation to the local law-enforcement agency where the adult resides or where the  
90 alleged abuse, neglect, or exploitation took place or, if these places are unknown, where the alleged  
91 abuse, neglect, or exploitation was discovered for investigation, upon receipt of an initial report pursuant  
92 to § 63.2-1606 involving any of the following or upon determining, during the course of an investigation  
93 pursuant to this article, the occurrence of any of the following:

- 94 1. Sexual abuse as defined in § 18.2-67.10;  
95 2. Death that is believed to be the result of abuse or neglect;  
96 3. Serious bodily injury or disease as defined in § 18.2-369 that is believed to be the result of abuse  
97 or neglect;  
98 4. Suspected financial exploitation of an adult; or  
99 5. Any other criminal activity involving abuse or neglect that places the adult in imminent danger of  
100 death or serious bodily harm.

101 Local law-enforcement agencies shall provide local departments and the adult protective services  
102 hotline with a preferred point of contact for referrals.

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

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

109 F. In any case of suspected adult abuse, neglect, or exploitation, local departments, with the informed  
110 consent of the adult or his legal representative, shall take or cause to be taken photographs, video  
111 recordings, or appropriate medical imaging of the adult and his environment as long as such measures  
112 are relevant to the investigation and do not conflict with § 18.2-386.1. However, if the adult is  
113 determined to be incapable of making an informed decision and of giving informed consent and either  
114 has no legal representative or the legal representative is the suspected perpetrator of the adult abuse,  
115 neglect, or exploitation, consent may be given by an agent appointed under an advance medical directive  
116 or medical power of attorney, or by a person authorized, pursuant to § 54.1-2986. In the event no agent  
117 or authorized representative is immediately available, then consent shall be deemed to be given.

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

120 H. Local departments shall not investigate allegations of abuse, neglect, or exploitation of adults

incarcerated in state correctional facilities.

I. 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, *or as otherwise authorized under the provisions of § 63.2-1610.2.*

J. ~~All~~ Except as provided in § 63.2-1610.4, written findings and actions of the local department or its director regarding adult protective services investigations are final and shall not be (i) appealable to the Commissioner for Aging and Rehabilitative Services or (ii) considered a final agency action for purposes of judicial review pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

**§ 63.2-1605.1. Investigations by local departments.**

A. Local departments conducting investigations pursuant to subsection B of § 63.2-1605 shall collect information necessary to determine:

1. The immediate safety needs of the adult alleged to be the victim of abuse, neglect, or exploitation;
2. The protective, rehabilitative, or other service needs of the adult alleged to be the victim of abuse, neglect, or exploitation;
3. Risk of future harm to the adult alleged to be the victim of abuse, neglect, or exploitation;
4. Alternative plans for the safety of the adult alleged to be the victim of abuse, neglect, or exploitation if protective, rehabilitative, or other services are needed and the adult is unable or unwilling to participate in services;
5. Whether abuse, neglect, or exploitation has occurred;
6. If abuse, neglect, or exploitation has occurred, who abused, neglected, or exploited the adult; and
7. Whether the report or complaint is founded or unfounded.

B. If the local department responds to a report or complaint of adult abuse, neglect, or exploitation by conducting an investigation, the local department shall:

1. Complete a report and enter it into the statewide automation system maintained by the Department;

2. Consult with the adult alleged to be the victim of abuse, neglect, or exploitation to arrange for necessary protective, rehabilitative, and other services to be provided to such adult;

3. If the adult alleged to be the victim of abuse, neglect, or exploitation lacks the capacity to consent to receive adult protective services, petition the court for services deemed necessary pursuant to § 63.2-1608;

4. Determine within 45 days if the report of abuse, neglect, or exploitation is founded or unfounded and transmit a report to such effect to the Department and to the alleged perpetrator of adult abuse, neglect, or exploitation. However, upon written justification by the local department, the time for such determination may be extended not to exceed a total of 60 days or, in the event that the investigation is being conducted in cooperation with a law-enforcement agency and both parties agree that circumstances so warrant, as stated in the written justification, the time for such determination may be extended not to exceed 90 days. If through the exercise of reasonable diligence the local department is unable to find the adult who is the alleged victim of abuse, neglect, or exploitation, the time during which such adult cannot be found shall not be computed as part of the total time period allowed for the investigation and determination and documentation of such reasonable diligence shall be placed in the record. In cases involving the death or alleged sexual abuse of an adult, the time during which records necessary for the investigation of the complaint but not created by or under the control of the local department, including autopsy or medical or forensic records or reports, are not available to the local department due to circumstances beyond the local department's control shall not be computed as part of the total time period allowed for the investigation and determination, and documentation of the circumstances that resulted in the delay shall be placed in the record;

5. If the report of abuse, neglect, or exploitation is unfounded, transmit a report to such effect to the complainant, the alleged victim, and his guardian, as applicable, and the person alleged to have committed adult abuse, neglect, or exploitation; and

6. If the report of abuse, neglect, or exploitation is founded, and the perpetrator is or was at the time of the investigation or the conduct that led to the report a full-time, part-time, permanent, or temporary employee of a school division located within the Commonwealth, notify the relevant school board of the founded complaint without delay.

Any information exchanged for the purposes of this subsection shall not be considered a violation of § 63.2-102 or 63.2-104.

C. A person who has not previously participated in the investigation of complaints of abuse, neglect, or exploitation in accordance with this chapter shall not participate in the investigation of any case

involving a complaint of alleged sexual abuse unless he (i) has completed a Board-approved training program for the investigation of complaints involving alleged sexual abuse or (ii) is under the direct supervision of a person who has completed a Board-approved training program for the investigation of complaints involving alleged sexual abuse. No individual may make a determination of whether a case involving a complaint of alleged sexual abuse is founded or unfounded unless he has completed a Board-approved training program for the investigation of complaints involving alleged sexual abuse.

**§ 63.2-1610.1. Cooperation by state entities.**

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

**§ 63.2-1610.2. Central registry; retention of records; notice; reports made in bad faith or with malicious intent.**

A. The Department shall maintain an adult abuse, neglect, and exploitation information system that includes a central registry of founded complaints. The central registry shall contain such information as shall be prescribed by Board regulation.

B. The Department shall maintain all reports regarding investigations in which a report or complaint was deemed unfounded and all reports or complaints determined to be not valid in a record that is separate from the central registry and accessible only by the Department and local departments for adult protective services and by the person alleged to have committed abuse, neglect, or exploitation. Such complaints or reports shall be used to provide local departments with information necessary to conduct an investigation pursuant to § 63.2-1605.1. In no event shall the mere existence of a prior complaint or report be used to determine that a subsequent complaint or report is founded.

The record of unfounded investigations and reports and complaints determined to be not valid shall be purged one year after the date of the complaint or report if there are no subsequent complaints or reports regarding the same victim or perpetrator within such one-year period. The local department shall retain such records for an additional period of up to two years if requested in writing by the person who was alleged to have committed abuse, neglect, or exploitation in the complaint or report. However, upon presentation of a certified copy of a court order stating that the complaint or report was found to have been made in bad faith or with malicious intent pursuant to subsection D, the records regarding the person alleged to have committed abuse, neglect, or exploitation in such report or complaint shall be purged immediately and written notice of such purging shall be provided to the alleged perpetrator.

C. At the time the local department notifies a person who is alleged to have committed abuse, neglect, or exploitation in a complaint or report made pursuant to this chapter that such complaint or report has been deemed unfounded, the local department shall also provide notice to such person regarding the length of time the record will be retained and of the availability of the procedures set forth in subsection D. Upon request, the local department shall advise the person who was the subject of an unfounded investigation if the complaint or report was made anonymously; however, the identity of a complainant or reporter shall not be disclosed unless ordered by a court pursuant to subsection D.

D. If any person who was alleged to have committed abuse, neglect, or exploitation in a report or complaint that was determined to be unfounded believes that such report or complaint was made in bad faith or with malicious intent, such person may petition the circuit court in the jurisdiction in which the report or complaint was made for the release to such person of the investigation records. The petition shall specifically set forth the reasons the person believes that such report or complaint was made in bad faith or with malicious intent. Upon the filing of such petition, the circuit court shall request and the local department shall provide to the circuit court its records of the investigation for the circuit court's in camera review. The petitioner shall be entitled to present evidence to support his petition. If the circuit court determines that there is a reasonable question of fact as to whether the report or complaint was made in bad faith or with malicious intent and that disclosure of the identity of the complainant would not be likely to endanger the life or safety of the complainant, it shall provide to the petitioner a copy of the records of the investigation. The original records shall be subject to discovery in any subsequent civil action regarding the making of a complaint or report in bad faith or with malicious intent.

**§ 63.2-1610.3. Central registry; disclosure of information.**

The information contained in the central registry established pursuant to § 63.2-1610.2 shall not be open to inspection by the public. However, appropriate disclosure may be made in accordance with this section or as otherwise provided by law or Board regulations.

The Department shall respond to requests for a search of the central registry made by (i) local departments, (ii) local school boards, and (iii) governing boards or administrators of private schools accredited pursuant to § 22.1-19 regarding applicants for employment, pursuant to § 22.1-296.4, within 10 business days in cases in which there is no match within the central registry regarding the applicant for employment. In cases in which there is a match within the central registry regarding the applicant

for employment, the Department shall respond to such requests within 30 business days. The response may be sent by first-class mail or facsimile transmission.

**§ 63.2-1610.4. Appeals of certain actions of local departments.**

A. A person who is suspected of or is found to have committed abuse, neglect, or exploitation pursuant to this chapter may, within 30 days of being notified of that determination, request the local department to amend its determination and related records. Upon written request, the local department shall provide the appellant all information used in making its determination. Disclosure of the reporter's name or information which may endanger the well-being of the victim shall not be released. The identity of a collateral witness or any other person shall not be released if disclosure may endanger his life or safety. Information prohibited from being disclosed by state or federal law or regulation shall not be released.

The local department shall hold an informal conference or consultation in which the appellant, who may be represented by counsel, and representatives of the local department shall be entitled to informally present testimony of witnesses, documents, factual data, arguments, or other submissions of proof to the local department. With the exception of the local director, no person whose regular duties include substantial involvement with adult abuse, neglect, or exploitation cases shall preside over the informal conference.

If the local department refuses the request for amendment or fails to act within 45 days after receiving such request, the appellant may, within 30 days thereafter, petition the Commissioner for an administrative review hearing. The appellant may obtain an extension of the 45-day period in which the local department must act by submitting a written request for such extension to the Commissioner. The extension period, which shall not exceed 60 days, shall begin at the end of the original 45-day period in which the local department must act. In the event an extension is granted, the 30-day period in which the appellant is permitted to request an administrative review hearing by the Commissioner shall begin on the termination of the extension period. Upon receiving a timely request for an administrative review hearing, the Commissioner shall grant a hearing to determine whether it appears, by a preponderance of the evidence, that the local department's determination or record contains information which is irrelevant or inaccurate regarding the commission of abuse, neglect, or exploitation by the appellant and therefore shall be amended.

B. The Commissioner shall designate and authorize one or more members of his staff to serve as hearing officers and preside over such administrative review hearings. The decision of such hearing officers shall have the same force and effect as if the Commissioner had made the decision. The hearing officer shall have the authority to issue subpoenas for the production of documents and the appearance of witnesses. The hearing officer is authorized to determine the number of depositions that will be allowed and to administer oaths or affirmations to all parties and witnesses who plan to testify at the hearing.

The Board shall adopt regulations necessary for the conduct of such hearings. Such regulations shall include provisions stating that (i) the appellant and local department shall have the right to submit oral or written testimony or documents; (ii) the appellant may be represented by counsel at the hearing; and (iii) the appellant shall be informed of the procedures by which information will be made available to or withheld from the appellant. In the case of any information withheld, the appellant shall be advised of the general nature of such information and the reasons, for privacy or otherwise, that it is being withheld. Upon giving reasonable notice, either party at his own expense may depose a nonparty and submit such deposition at the hearing pursuant to Board regulation. Upon written motion and good cause shown, the hearing officer may issue subpoenas for the production of documents or to compel the attendance of witnesses at the hearing. Hearing officers shall have the authority to order the amendment of any determinations or records presented if necessary to ensure such determinations or records are accurate and in compliance with the requirements of this chapter or Board regulations promulgated pursuant thereto. Upon petition, the court shall have the power to enforce any subpoena that is not complied with or to review any refusal to issue a subpoena. Such decisions may not be further appealed except as part of a final decision that is subject to judicial review.

If, after hearing the facts of the case, the hearing officer determines that the appellant has presented information that was not available to the local department at the time of the local conference and, if made available, may have resulted in a different determination by the local department, the hearing officer may remand the case to the local department for reconsideration. Upon remand, the local department shall reconsider the case within 14 days. If the local department fails to act or amend the record to the satisfaction of the appellant within 14 days, the case shall be returned to the hearing officer for a determination.

If aggrieved by the decision of the hearing officer, the appellant may request further review of the decision in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq.).

305 C. Whenever an appeal of the local department's finding is made and a criminal charge or  
306 investigation is also filed or commenced against the appellant for the same conduct involving the same  
307 victim as investigated by the local department, the appeal process shall automatically be stayed until the  
308 criminal prosecution in the trial court is completed, until the criminal investigation is closed, or, in the  
309 case of a criminal investigation that is not completed within 180 days of the appellant's request for an  
310 appeal of the local department's finding, for 180 days after the appellant's request for appeal. During  
311 such stay, the appellant's right of access to the records of the local department regarding the matter  
312 being appealed shall also be stayed. Once the criminal prosecution in the trial court has been  
313 completed, the criminal investigation is closed, or, in the case of a criminal investigation that is not  
314 completed within 180 days of the appellant's request for an appeal of the local department's finding,  
315 180 days have passed, the local department shall advise the appellant in writing of his right to resume  
316 his appeal within the time frames provided by law and regulation.