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HOUSE BILL NO. 5042

Offered August 18, 2020

Prefiled August 17, 2020

A BILL to amend and reenact §§ 2.2-3802, 51.5-148, and 63.2-1605 of the Code of Virginia and to amend the Code of Virginia by adding in Article 5 of Chapter 14 of Title 51.5 sections numbered 51.5-148.1 and 51.5-148.2 and by adding sections numbered 63.2-1605.1, 63.2-1605.2, and 63.2-1605.3, relating to adult protective services; central registry.

Patrons—Head; Senator: Kiggans

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3802, 51.5-148, and 63.2-1605 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 5 of Chapter 14 of Title 51.5 sections numbered 51.5-148.1 and 51.5-148.2 and by adding sections numbered 63.2-1605.1, 63.2-1605.2, and 63.2-1605.3 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.);

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13. Maintained by (i) the Office of the State Inspector General or internal audit departments of state agencies or institutions that deal with communications and investigations relating to the Fraud, Waste and Abuse Hotline or (ii) an auditor appointed by the local governing body of any county, city, or town or a school board that deals with local investigations required by § 15.2-2511.2;

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

15. Maintained by the Department of Social Services related to child welfare or public assistance programs when requests for personal information are made to the Department of Social Services. Requests for information from these systems shall be made to the appropriate local department of social services that is the custodian of that record. Notwithstanding the language in this section, an individual shall not be prohibited from obtaining information from the central registry in accordance with the provisions of § 63.2-1515; and

16. Maintained by the Department for Aging and Rehabilitative Services related to adult services, adult protective services, or auxiliary grants when requests for personal information are made to the Department for Aging and Rehabilitative Services. Requests for information from ~~these~~ *such* systems shall be made to the appropriate local department of social services that is the custodian of that record. *Notwithstanding the language in this section, an individual shall not be prohibited from obtaining information from the central registry in accordance with the provisions of § 51.5-148.2.*

§ 51.5-148. Establishment of Adult Protective Services Unit; powers and duties.

A. The Department shall have responsibility for the planning and oversight of adult protective services in the Commonwealth. The Commissioner shall establish within the Department for Aging and Rehabilitative Services an Adult Protective Services Unit ~~which~~ *that* shall oversee the planning, administration, and implementation of adult protective services in the Commonwealth. Adult protective services shall be provided to the public by local departments of social services pursuant to Chapter 16 (§ 63.2-1600 et seq.) of Title 63.2 in cooperation with the Department and subject to the regulations and oversight of the Commissioner.

B. The Adult Protective Services Unit shall have the following powers and duties:

1. To work together with local departments of social services to support, strengthen, and evaluate adult protective services programs provided by such local departments;

2. To assist local departments of social services in developing and implementing programs to respond to and 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 establish minimum standards of training and provide educational opportunities to qualify 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 provide 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;

5. To develop policies and procedures to guide the work of persons in the field of adult protective services;

6. To prepare and disseminate statistical information on adult protective services in Virginia;

7. To operate an adult protective services 24-hour toll-free hotline and provide training and technical assistance to the hotline staff;

8. To provide coordination among the adult protective services program and other state 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; *and*

10. To maintain an adult abuse, neglect, and exploitation information system and a central registry of substantiated reports pursuant to § 51.5-148.1.

§ 51.5-148.1. Central registry; retention of records; notice; reports made in bad faith or with malicious intent.

A. *The Department shall establish and maintain an adult abuse, neglect, and exploitation information system and a central registry of substantiated reports. Identifying information about an adult who the local department has determined is self-neglecting shall not be entered in the central registry. Subject to the provisions of § 51.5-148.2, the operation of the central registry and the information to be documented therein shall be prescribed by regulations promulgated by the Commissioner.*

B. *The Department shall maintain all reports regarding investigations in which a report was deemed unfounded and all reports 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. In no event shall the mere existence of a prior report be used to determine that a subsequent report is substantiated.*

The record of unfounded investigations and reports determined to be not valid shall be purged one

year after the date of the report if there are no subsequent 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 report. However, upon presentation of a certified copy of a court order stating that the 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 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 report made pursuant to this article that the investigation was 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 inform such person whether the report was made anonymously; however, the identity of a 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 that was determined to be unfounded believes that such report was made in bad faith or with malicious intent, such person may petition the circuit court in the jurisdiction in which the report 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 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 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 report and, if an investigation was conducted, the records of the investigation. The original records shall be subject to discovery in any subsequent civil action regarding the making of a report in bad faith or with malicious intent.

§ 51.5-148.2. Central registry; disclosure of information.

The Department shall maintain the central registry of substantiated reports of adult abuse, neglect, and exploitation established pursuant to § 51.5-148.1 on its website. Such central registry shall be searchable by members of the public, provided that the person initiating the search provides the first and last name and the last four digits of the social security number of the person who is the subject of the search.

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

A. Each local board, to the extent that federal or state matching funds are made available to each locality, shall provide, pursuant to regulations and subject to supervision of the Commissioner for Aging and Rehabilitative Services, adult protective services for adults who are found to be abused, neglected, or exploited and who meet one of the following criteria: (i) the adult is 60 years of age or older or (ii) the adult is 18 years of age or older and is incapacitated. 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 if the local department deems the report valid shall initiate an investigation pursuant to § 63.2-1605.1 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 or the adult protective services hotline shall immediately refer the matter and all relevant documentation to 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, where the alleged abuse, neglect, or exploitation was discovered for investigation, upon receipt of an initial report pursuant to § 63.2-1606 involving any of the following or upon determining, during the course of an investigation pursuant to this article, the occurrence of any of the following:

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

182 death or serious bodily harm.

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

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

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

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

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

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

204 I. The report and evidence received by the local department and any written findings, evaluations,
205 records, and recommended actions shall be confidential and shall be exempt from disclosure
206 requirements of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that such
207 information may be disclosed to persons having a legitimate interest in the matter in accordance with
208 §§ 63.2-102 and 63.2-104 and, pursuant to official interagency agreements or memoranda of
209 understanding between state agencies, or as otherwise authorized under the provisions of § 63.2-1605.2.

210 J. ~~All~~ Except as provided in § 63.2-1605.3, written findings and actions of the local department or its
211 director regarding adult protective services investigations are final and shall not be (i) appealable to the
212 Commissioner for Aging and Rehabilitative Services or (ii) considered a final agency action for purposes
213 of judicial review pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

214 K. Each local department may foster, when practicable, the creation, maintenance, and coordination
215 of community-based multidisciplinary teams that shall include, where possible, members of the medical,
216 mental health, social work, nursing, education, legal, and law-enforcement professions. Such teams shall:

217 1. Assist the local department in identifying abused, neglected, and exploited adults as defined in
218 § 63.2-1603.

219 2. Coordinate medical, social, and legal services for abused, neglected, and exploited adults and their
220 families.

221 3. Develop innovative programs for detection and prevention of the abuse, neglect, and exploitation
222 of adults.

223 4. Promote community awareness and action to address the abuse, neglect, and exploitation of adults.

224 5. Disseminate information to the general public regarding the problem of abuse, neglect, and
225 exploitation of adults, strategies and methods for preventing such abuse, neglect, and exploitation, and
226 treatment options for abused, neglected, and exploited adults.

227 Such multidisciplinary teams may share information among the parties in the performance of their
228 duties but shall be bound by confidentiality and shall execute a sworn statement to honor the
229 confidentiality of the information they share. A violation of this subsection is punishable as a Class 3
230 misdemeanor. All such information and records shall be used by the team only in the exercise of its
231 proper function and shall not be disclosed. No person who participated in the team and no member of
232 the team shall be required to make any statement as to what transpired during a meeting or what
233 information was collected during the meeting. Upon the conclusion of a meeting, all information and
234 records concerning the adult shall be returned to the originating agency or destroyed. Any information
235 exchanged in accordance with the multidisciplinary review team shall not be considered to be a violation
236 of any of the provisions of § 63.2-102, 63.2-104, or 63.2-105.

237 **§ 63.2-1605.1. Investigations by local departments.**

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

240 1. The immediate safety needs of the adult alleged to be the victim of abuse, neglect, or exploitation;

241 2. The protective, rehabilitative, or other service needs of the adult alleged to be the victim of abuse,
242 neglect, or exploitation;

243 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 such 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 is substantiated or unfounded.

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

1. Document the findings and results of the investigation and enter such information into the statewide automation system maintained by the Department for Aging and Rehabilitative Services;

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 substantiated or unfounded, enter such disposition in the statewide automation system, and transmit a report to such effect to the alleged perpetrator of adult abuse, neglect, or exploitation. 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 or financial exploitation of an adult, the time during which records necessary for the investigation of the report but not created by or under the control of the local department, including autopsy, medical, forensic, or financial 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; and

5. If the investigation is unfounded, provide notice of such investigation disposition to the complainant, the alleged victim, and his guardian, as applicable, and the person alleged to have committed adult abuse, neglect, or exploitation.

Any information exchanged for the purposes of this subsection shall not be considered a violation of § 51.5-122, 63.2-102, or 63.2-104.

§ 63.2-1605.2. 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 worker of a local department in the detection, investigation, and prevention of abuse, neglect, or exploitation.

§ 63.2-1605.3. Appeals of certain actions of local departments.

A. A person who is found to have committed abuse, neglect, or exploitation pursuant to this article 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 that 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 Aging and Rehabilitative Services 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 for Aging and Rehabilitative Services. The extension period,

305 which shall not exceed 60 days, shall begin at the end of the original 45-day period in which the local
306 department must act. In the event an extension is granted, the 30-day period in which the appellant is
307 permitted to request an administrative review hearing by the Commissioner for Aging and Rehabilitative
308 Services shall begin on the termination of the extension period. Upon receiving a timely request for an
309 administrative review hearing, the Commissioner for Aging and Rehabilitative Services shall grant a
310 hearing to determine whether it appears, by a preponderance of the evidence, that the local
311 department's determination or record contains information that is irrelevant or inaccurate regarding the
312 commission of abuse, neglect, or exploitation by the appellant and therefore shall be amended.

313 B. The Commissioner for Aging and Rehabilitative Services shall designate and authorize one or
314 more duly qualified hearing officers to preside over such administrative review hearings. The decision of
315 such hearing officers shall have the same force and effect as if the Commissioner for Aging and
316 Rehabilitative Services had made the decision. The hearing officer shall have the authority to issue
317 subpoenas for the production of documents and the appearance of witnesses. The hearing officer is
318 authorized to determine the number of depositions that will be allowed and to administer oaths or
319 affirmations to all parties and witnesses who plan to testify at the hearing.

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

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

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

345 C. Whenever an appeal of the local department's finding is made and a criminal charge or
346 investigation is also filed or commenced against the appellant for the same conduct involving the same
347 victim as investigated by the local department, the appeal process shall automatically be stayed until the
348 criminal prosecution in the trial court is completed, until the criminal investigation is closed, or, in the
349 case of a criminal investigation that is not completed within 180 days of the appellant's request for an
350 appeal of the local department's finding, for 180 days after the appellant's request for appeal. During
351 such stay, the appellant's right of access to the records of the local department regarding the matter
352 being appealed shall also be stayed. Once the criminal prosecution in the trial court has been
353 completed, the criminal investigation is closed, or, in the case of a criminal investigation that is not
354 completed within 180 days of the appellant's request for an appeal of the local department's finding,
355 180 days have passed, the local department shall advise the appellant in writing of his right to resume
356 his appeal within the time frames provided by law and regulation.

357 D. The local department shall transmit all decisions and findings made during an appeal pursuant to
358 this section to the Commissioner for Aging and Rehabilitative Services.