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HOUSE BILL NO. 668

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact §§ 37.2-304, 37.2-709, and 51.5-39.13 of the Code of Virginia, relating to facilities for civilly committed sexually violent predators; reports to the Commonwealth's designated protection and advocacy system.

Patron—Hope

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-304, 37.2-709, and 51.5-39.13 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-304. Duties of Commissioner.

The Commissioner shall be the chief executive officer of the Department and shall have the following duties and powers:

1. To supervise and manage the Department and its state facilities.
2. To employ the personnel required to carry out the purposes of this title.
3. To make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this title, including contracts with the United States, other states, and agencies and governmental subdivisions of the Commonwealth, consistent with policies and regulations of the Board and applicable federal and state statutes and regulations.

4. To accept, hold, and enjoy gifts, donations, and bequests on behalf of the Department from the United States government, agencies and instrumentalities thereof, and any other source, subject to the approval of the Governor. To these ends, the Commissioner shall have the power to comply with conditions and execute agreements that may be necessary, convenient, or desirable, consistent with policies and regulations of the Board.

5. To accept, execute, and administer any trust in which the Department may have an interest, under the terms of the instruments creating the trust, subject to the approval of the Governor.

6. To transfer between state hospitals and training centers school-age individuals who have been identified as appropriate to be placed in public school programs and to negotiate with other school divisions for placements in order to ameliorate the impact on those school divisions located in a jurisdiction in which a state hospital or training center is located.

7. To provide to the Director of the Commonwealth's designated protection and advocacy system, established pursuant to § 51.5-39.13, a written report setting forth the known facts of (i) critical incidents, as that term is defined in § 37.2-709.1, or deaths of individuals receiving services in facilities, including any facility for individuals civilly committed to the custody of the Department pursuant to Chapter 9 (§ 37.2-900 et seq.), within 15 working days of such critical incident or death; (ii) serious incidents and deaths that are required to be reported to the Department through its incident reporting system, as required by regulations adopted by the Board pursuant to Chapter 4 (§ 37.2-400 et seq.), within 15 working days of the date the report is received; and (iii) allegations of abuse or neglect that are required to be reported pursuant to regulations adopted by the Board pursuant to Chapter 4 (§ 37.2-400 et seq.), within five working days of the date on which the director's final decision on the allegation is reported to the Department.

8. To work with the appropriate state and federal entities to ensure that any individual who has received services in a state facility for more than one year has possession of or receives prior to discharge any of the following documents, when they are needed to obtain the services contained in his discharge plan: a Department of Motor Vehicles approved identification card that will expire 90 days from issuance, a copy of his birth certificate if the individual was born in the Commonwealth, or a social security card from the Social Security Administration. State facility directors, as part of their responsibilities pursuant to § 37.2-837, shall implement this provision when discharging individuals.

9. To work with the Department of Veterans Services and the Department for Aging and Rehabilitative Services to establish a program for mental health and rehabilitative services for Virginia veterans and members of the Virginia National Guard and Virginia residents in the Armed Forces Reserves not in active federal service and their family members pursuant to § 2.2-2001.1.

10. To establish and maintain a pharmaceutical and therapeutics committee composed of representatives of the Department of Medical Assistance Services, state facilities operated by the

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59 Department, community services boards, at least one health insurance plan, and at least one individual
60 receiving services to develop a drug formulary for use at all community services boards, state facilities
61 operated by the Department, and providers licensed by the Department.

62 11. To establish and maintain the Commonwealth Mental Health First Aid Program pursuant to
63 § 37.2-312.2.

64 12. To submit a report for the preceding fiscal year by December 1 of each year to the Governor and
65 the Chairmen of the House Committee on Appropriations and Senate Committee on Finance and
66 Appropriations that provides information on the operation of Virginia's publicly funded behavioral health
67 and developmental services system. The report shall include a brief narrative and data on the number of
68 individuals receiving state facility services or community services board services, including purchased
69 inpatient psychiatric services; the types and amounts of services received by these individuals; and state
70 facility and community services board service capacities, staffing, revenues, and expenditures. The
71 annual report shall describe major new initiatives implemented during the past year and shall provide
72 information on the accomplishment of systemic outcome and performance measures during the year.

73 13. To establish a comprehensive program for the prevention and treatment of problem gambling in
74 the Commonwealth and administer the Problem Gambling Treatment and Support Fund established
75 pursuant to § 37.2-314.2.

76 Unless specifically authorized by the Governor to accept or undertake activities for compensation, the
77 Commissioner shall devote his entire time to his duties.

78 **§ 37.2-709. State facility reporting requirements.**

79 Each director of a state facility, *including any facility for individuals civilly committed to the custody*
80 *of the Department pursuant to Chapter 9 (§ 37.2-900 et seq.),* shall notify the Director of the
81 Commonwealth's designated protection and advocacy system, established pursuant to § 51.5-39.13, in
82 writing within 48 hours of critical incidents or deaths of individuals receiving services in the state
83 facility.

84 **§ 51.5-39.13. Conversion of the Virginia Office for Protection and Advocacy to a nonprofit**
85 **entity.**

86 A. Not later than December 31, 2013, the Director, in consultation with the Board, shall establish a
87 nonprofit entity to provide advocacy, legal, and ombudsman services to persons with disabilities. Such
88 nonprofit entity shall be established in such a manner that the entity is in compliance with all federal
89 law regarding a protection and advocacy system. Such nonprofit entity shall be designated as the agency
90 to protect and advocate for the rights of persons with mental, cognitive, sensory, physical, or other
91 disabilities, *including, to the extent funding for such purpose is provided by the General Assembly,*
92 *individuals who are civilly committed to the custody of the Department of Behavioral Health and*
93 *Developmental Services pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2,* and to receive federal
94 funds on behalf of the Commonwealth of Virginia to implement the federal Protection and Advocacy for
95 Individuals with Mental Illness Act, the federal Developmental Disabilities Assistance and Bill of Rights
96 Act, the federal Rehabilitation Act, the Virginians with Disabilities Act (§ 51.5-1 et seq.), and such other
97 related programs as may be established in state or federal law.

98 B. Not later than January 1, 2014, the Governor shall designate the nonprofit entity established
99 pursuant to subsection A to serve as the state's protection and advocacy system, and such nonprofit
100 entity shall thereafter be known as the disAbility Law Center of Virginia.

101 C. Employees of the Virginia Office for Protection and Advocacy who transition to employment with
102 the organization designated pursuant to subsection B shall not be subject to the provisions of the
103 Workforce Transition Act (§ 2.2-3200 et seq.).