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HOUSE BILL NO. 1945

Offered January 11, 2017

Prefiled January 10, 2017

A *BILL to amend and reenact §§ 63.2-100 and 63.2-1606 of the Code of Virginia, relating to adult exploitation.*

Patrons—Peace, Kory, Krizek and LeMunyon

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

**1. That §§ 63.2-100 and 63.2-1606 of the Code of Virginia are amended and reenacted as follows:
§ 63.2-100. Definitions.**

As used in this title, unless the context requires a different meaning:

"Abused or neglected child" means any child less than 18 years of age:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child. Further, a decision by parents who have legal authority for the child or, in the absence of parents with legal authority for the child, any person with legal authority for the child, who refuses a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person with legal authority and the child; (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person with legal authority and the child have considered alternative treatment options; and (iv) the parents or other person with legal authority and the child believe in good faith that such decision is in the child's best interest. Nothing in this subdivision shall be construed to limit the provisions of § 16.1-278.4;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law;

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis;

6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55-79.2, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902; or

7. Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in the Trafficking Victims Protection Act of 2000, 22 U.S.C § 7102 et seq., and in the Justice for Victims of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.

If a civil proceeding under this title is based solely on the parent having left the child at a hospital or emergency medical services agency, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended emergency medical services agency that employs emergency medical services providers, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

"Adoptive home" means any family home selected and approved by a parent, local board or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a

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59 child-placing agency in an approved home for the purpose of adoption.

60 "Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable
61 confinement of an adult.

62 "Adult day care center" means any facility that is either operated for profit or that desires licensure
63 and that provides supplementary care and protection during only a part of the day to four or more aged,
64 infirm or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by
65 the State Board of Health or the Department of Behavioral Health and Developmental Services, and (ii)
66 the home or residence of an individual who cares for only persons related to him by blood or marriage.
67 Included in this definition are any two or more places, establishments or institutions owned, operated or
68 controlled by a single entity and providing such supplementary care and protection to a combined total
69 of four or more aged, infirm or disabled adults.

70 "Adult exploitation" means the illegal, *unauthorized, improper, or fraudulent* use of an ~~incapacitated~~
71 adult or his *funds, property, benefits, resources, or other assets* for another's profit, *benefit, or advantage,*
72 *including a caregiver or person serving in a fiduciary capacity, or that deprives the adult of his rightful*
73 *use of or access to such funds, property, benefits, resources, or other assets.* "Adult exploitation"
74 *includes (i) a breach of a fiduciary obligation to an adult to his detriment or a failure to use the*
75 *financial resources of an adult in a manner that results in neglect of such adult; (ii) the acquisition,*
76 *possession, or control of an adult's financial resources or property through the use of undue influence,*
77 *coercion, harassment, or duress; and (iii) forcing or coercing an adult to pay for goods or services or*
78 *perform services against his will for another's profit, benefit, or advantage.*

79 "Adult foster care" means room and board, supervision, and special services to an adult who has a
80 physical or mental condition. Adult foster care may be provided by a single provider for up to three
81 adults.

82 "Adult neglect" means that an adult is living under such circumstances that he is not able to provide
83 for himself or is not being provided services necessary to maintain his physical and mental health and
84 that the failure to receive such necessary services impairs or threatens to impair his well-being.
85 However, no adult shall be considered neglected solely on the basis that such adult is receiving religious
86 nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such
87 treatment or care is performed in good faith and in accordance with the religious practices of the adult
88 and there is a written or oral expression of consent by that adult.

89 "Adult protective services" means services provided by the local department that are necessary to
90 protect an adult from abuse, neglect or exploitation.

91 "Assisted living care" means a level of service provided by an assisted living facility for adults who
92 may have physical or mental impairments and require at least a moderate level of assistance with
93 activities of daily living.

94 "Assisted living facility" means any congregate residential setting that provides or coordinates
95 personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for
96 the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for
97 in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board
98 of Health or the Department of Behavioral Health and Developmental Services, but including any
99 portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or
100 maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility
101 serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational
102 program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the Department as
103 a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.), but including any portion of the
104 facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled
105 that provides no more than basic coordination of care services and is funded by the U.S. Department of
106 Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing
107 Development Authority. Included in this definition are any two or more places, establishments or
108 institutions owned or operated by a single entity and providing maintenance or care to a combined total
109 of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general
110 supervision and oversight of the physical and mental well-being of an aged, infirm or disabled
111 individual.

112 "Auxiliary grants" means cash payments made to certain aged, blind or disabled individuals who
113 receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive
114 these benefits except for excess income.

115 "Birth family" or "birth sibling" means the child's biological family or biological sibling.

116 "Birth parent" means the child's biological parent and, for purposes of adoptive placement, means
117 parent(s) by previous adoption.

118 "Board" means the State Board of Social Services.

119 "Child" means any natural person under 18 years of age.

120 "Child day center" means a child day program offered to (i) two or more children under the age of

121 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or
122 more children at any location.

123 "Child day program" means a regularly operating service arrangement for children where, during the
124 absence of a parent or guardian, a person or organization has agreed to assume responsibility for the
125 supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

126 "Child-placing agency" means any person who places children in foster homes, adoptive homes or
127 independent living arrangements pursuant to § 63.2-1819 or a local board that places children in foster
128 homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221. Officers, employees, or
129 agents of the Commonwealth, or any locality acting within the scope of their authority as such, who
130 serve as or maintain a child-placing agency, shall not be required to be licensed.

131 "Child-protective services" means the identification, receipt and immediate response to complaints
132 and reports of alleged child abuse or neglect for children under 18 years of age. It also includes
133 assessment, and arranging for and providing necessary protective and rehabilitative services for a child
134 and his family when the child has been found to have been abused or neglected or is at risk of being
135 abused or neglected.

136 "Child support services" means any civil, criminal or administrative action taken by the Division of
137 Child Support Enforcement to locate parents; establish paternity; and establish, modify, enforce, or
138 collect child support, or child and spousal support.

139 "Child-welfare agency" means a child day center, child-placing agency, children's residential facility,
140 family day home, family day system, or independent foster home.

141 "Children's residential facility" means any facility, child-caring institution, or group home that is
142 maintained for the purpose of receiving children separated from their parents or guardians for full-time
143 care, maintenance, protection and guidance, or for the purpose of providing independent living services
144 to persons between 18 and 21 years of age who are in the process of transitioning out of foster care.
145 Children's residential facility shall not include:

146 1. A licensed or accredited educational institution whose pupils, in the ordinary course of events,
147 return annually to the homes of their parents or guardians for not less than two months of summer
148 vacation;

149 2. An establishment required to be licensed as a summer camp by § 35.1-18; and

150 3. A licensed or accredited hospital legally maintained as such.

151 "Commissioner" means the Commissioner of the Department, his designee or authorized
152 representative.

153 "Department" means the State Department of Social Services.

154 "Department of Health and Human Services" means the Department of Health and Human Services
155 of the United States government or any department or agency thereof that may hereafter be designated
156 as the agency to administer the Social Security Act, as amended.

157 "Disposable income" means that part of the income due and payable of any individual remaining
158 after the deduction of any amount required by law to be withheld.

159 "Energy assistance" means benefits to assist low-income households with their home heating and
160 cooling needs, including, but not limited to, purchase of materials or substances used for home heating,
161 repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or
162 repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance
163 with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the
164 Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

165 "Family day home" means a child day program offered in the residence of the provider or the home
166 of any of the children in care for one through 12 children under the age of 13, exclusive of the
167 provider's own children and any children who reside in the home, when at least one child receives care
168 for compensation. The provider of a licensed or registered family day home shall disclose to the parents
169 or guardians of children in their care the percentage of time per week that persons other than the
170 provider will care for the children. Family day homes serving five through 12 children, exclusive of the
171 provider's own children and any children who reside in the home, shall be licensed. However, no family
172 day home shall care for more than four children under the age of two, including the provider's own
173 children and any children who reside in the home, unless the family day home is licensed or voluntarily
174 registered. However, a family day home where the children in care are all related to the provider by
175 blood or marriage shall not be required to be licensed.

176 "Family day system" means any person who approves family day homes as members of its system;
177 who refers children to available family day homes in that system; and who, through contractual
178 arrangement, may provide central administrative functions including, but not limited to, training of
179 operators of member homes; technical assistance and consultation to operators of member homes;
180 inspection, supervision, monitoring, and evaluation of member homes; and referral of children to
181 available health and social services.

182 "Foster care placement" means placement of a child through (i) an agreement between the parents or
183 guardians and the local board where legal custody remains with the parents or guardians or (ii) an
184 entrustment or commitment of the child to the local board or licensed child-placing agency.

185 "Foster home" means the place of residence of any natural person in which any child, other than a
186 child by birth or adoption of such person, resides as a member of the household.

187 "General relief" means money payments and other forms of relief made to those persons mentioned
188 in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with §
189 63.2-401.

190 "Independent foster home" means a private family home in which any child, other than a child by
191 birth or adoption of such person, resides as a member of the household and has been placed therein
192 independently of a child-placing agency except (i) a home in which are received only children related by
193 birth or adoption of the person who maintains such home and children of personal friends of such
194 person and (ii) a home in which is received a child or children committed under the provisions of
195 subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8.

196 "Independent living" means a planned program of services designed to assist a child age 16 and over
197 and persons who are former foster care children between the ages of 18 and 21 in transitioning to
198 self-sufficiency.

199 "Independent living arrangement" means placement of a child at least 16 years of age who is in the
200 custody of a local board or licensed child-placing agency and has been placed by the local board or
201 licensed child-placing agency in a living arrangement in which he does not have daily substitute parental
202 supervision.

203 "Independent living services" means services and activities provided to a child in foster care 14 years
204 of age or older who was committed or entrusted to a local board of social services, child welfare
205 agency, or private child-placing agency. "Independent living services" may also mean services and
206 activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached
207 the age of 21 years or (ii) is at least 18 years of age but who has not yet reached 21 years of age and
208 who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of
209 a local board of social services. Such services shall include counseling, education, housing, employment,
210 and money management skills development, access to essential documents, and other appropriate
211 services to help children or persons prepare for self-sufficiency.

212 "Independent physician" means a physician who is chosen by the resident of the assisted living
213 facility and who has no financial interest in the assisted living facility, directly or indirectly, as an
214 owner, officer, or employee or as an independent contractor with the residence.

215 "Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster
216 care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other
217 entity authorized to make such placements in accordance with the laws of the foreign country under
218 which it operates.

219 "Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care
220 placement or in the home of the child's parent or with a relative or nonagency guardian, into or out of
221 the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or
222 nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the
223 action of any court.

224 "Kinship care" means the full-time care, nurturing, and protection of children by relatives.

225 "Local board" means the local board of social services representing one or more counties or cities.

226 "Local department" means the local department of social services of any county or city in this
227 Commonwealth.

228 "Local director" means the director or his designated representative of the local department of the
229 city or county.

230 "Merit system plan" means those regulations adopted by the Board in the development and operation
231 of a system of personnel administration meeting requirements of the federal Office of Personnel
232 Management.

233 "Parental placement" means locating or effecting the placement of a child or the placing of a child in
234 a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

235 "Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to the
236 aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services; child
237 care; and general relief.

238 "Qualified assessor" means an entity contracting with the Department of Medical Assistance Services
239 to perform nursing facility pre-admission screening or to complete the uniform assessment instrument for
240 a home and community-based waiver program, including an independent physician contracting with the
241 Department of Medical Assistance Services to complete the uniform assessment instrument for residents
242 of assisted living facilities, or any hospital that has contracted with the Department of Medical
243 Assistance Services to perform nursing facility pre-admission screenings.

244 "Registered family day home" means any family day home that has met the standards for voluntary
 245 registration for such homes pursuant to regulations adopted by the Board and that has obtained a
 246 certificate of registration from the Commissioner.

247 "Residential living care" means a level of service provided by an assisted living facility for adults
 248 who may have physical or mental impairments and require only minimal assistance with the activities of
 249 daily living. The definition of "residential living care" includes the services provided by independent
 250 living facilities that voluntarily become licensed.

251 "Sibling" means each of two or more children having one or more parents in common.

252 "Social services" means foster care, adoption, adoption assistance, child-protective services, domestic
 253 violence services, or any other services program implemented in accordance with regulations adopted by
 254 the Board. Social services also includes adult services pursuant to Article 4 (§ 51.5-144 et seq.) of
 255 Chapter 14 of Title 51.5 and adult protective services pursuant to Article 5 (§ 51.5-148) of Chapter 14
 256 of Title 51.5 provided by local departments of social services in accordance with regulations and under
 257 the supervision of the Commissioner for Aging and Rehabilitative Services.

258 "Special order" means an order imposing an administrative sanction issued to any party licensed
 259 pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A
 260 special order shall be considered a case decision as defined in § 2.2-4001.

261 "Temporary Assistance for Needy Families" or "TANF" means the program administered by the
 262 Department through which a relative can receive monthly cash assistance for the support of his eligible
 263 children.

264 "Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the
 265 Temporary Assistance for Needy Families program for families in which both natural or adoptive
 266 parents of a child reside in the home and neither parent is exempt from the Virginia Initiative for
 267 Employment Not Welfare (VIEW) participation under § 63.2-609.

268 "Title IV-E Foster Care" means a federal program authorized under §§ 472 and 473 of the Social
 269 Security Act, as amended, and administered by the Department through which foster care is provided on
 270 behalf of qualifying children.

271 **§ 63.2-1606. Protection of aged or incapacitated adults; mandated and voluntary reporting.**

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

279 1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503, with
 280 the exception of persons licensed by the Board of Veterinary Medicine;

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

282 3. Any emergency medical services provider certified by the Board of Health pursuant to
 283 § 32.1-111.5, unless such provider immediately reports the suspected abuse, neglect or exploitation
 284 directly to the attending physician at the hospital to which the adult is transported, who shall make such
 285 report forthwith;

286 4. Any guardian or conservator of an adult;

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

289 6. Any person providing full, intermittent or occasional care to an adult for compensation, including,
 290 but not limited to, companion, chore, homemaker, and personal care workers; and

291 7. Any law-enforcement officer.

292 B. The report shall be made in accordance with subsection A to the local department of the county
 293 or city wherein the adult resides or wherein the adult abuse, neglect or exploitation is believed to have
 294 occurred or to the adult protective services hotline. Nothing in this section shall be construed to
 295 eliminate or supersede any other obligation to report as required by law. If a person required to report
 296 under this section receives information regarding abuse, neglect or exploitation while providing
 297 professional services in a hospital, nursing facility or similar institution, then he may, in lieu of
 298 reporting, notify the person in charge of the institution or his designee, who shall report such
 299 information, in accordance with the institution's policies and procedures for reporting such matters,
 300 immediately upon his determination that there is reason to suspect abuse, neglect or exploitation. Any
 301 person required to make the report or notification required by this subsection shall do so either orally or
 302 in writing and shall disclose all information that is the basis for the suspicion of adult abuse, neglect or
 303 exploitation. Upon request, any person required to make the report shall make available to the adult
 304 protective services worker and the local department investigating the reported case of adult abuse,

305 neglect or exploitation any information, records or reports which document the basis for the report. All
306 persons required to report suspected adult abuse, neglect or exploitation shall cooperate with the
307 investigating adult protective services worker of a local department and shall make information, records
308 and reports which are relevant to the investigation available to such worker to the extent permitted by
309 state and federal law. Criminal investigative reports received from law-enforcement agencies shall not be
310 further disseminated by the investigating agency nor shall they be subject to public disclosure; such
311 reports may, however, be disclosed to the Adult Fatality Review Team as provided in § 32.1-283.5 or to
312 a local or regional adult fatality review team as provided in § 32.1-283.6 and, if reviewed by the Team
313 or a local or regional adult fatality review team, shall be subject to applicable confidentiality
314 requirements of the Team or a local or regional adult fatality review team.

315 C. Any financial institution staff who suspects that an adult has been exploited financially may report
316 such suspected exploitation to the local department of the county or city wherein the adult resides or
317 wherein the exploitation is believed to have occurred or to the adult protective services hotline. For
318 purposes of this section, "financial institution staff" means any employee, *agent, qualified individual, or*
319 *representative* of a bank, *trust company, savings institution, loan association, consumer finance*
320 *company, credit union, investment company, investment advisor, securities firm, accounting firm, or*
321 *insurance company.*

322 D. Any person other than those specified in subsection A who suspects that an adult is an abused,
323 neglected or exploited adult may report the matter to the local department of the county or city wherein
324 the adult resides or wherein the abuse, neglect or exploitation is believed to have occurred or to the
325 adult protective services hotline.

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

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

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

339 H. Any person who fails to make a required report or notification pursuant to subsection A shall be
340 subject to a civil penalty of not more than \$500 for the first failure and not less than \$100 nor more
341 than \$1,000 for any subsequent failures. Civil penalties under subdivision A 7 shall be determined by a
342 court of competent jurisdiction, in its discretion. All other civil penalties under this section shall be
343 determined by the Commissioner for Aging and Rehabilitative Services or his designee. The
344 Commissioner for Aging and Rehabilitative Services shall establish by regulation a process for imposing
345 and collecting civil penalties, and a process for appeal of the imposition of such penalty pursuant to
346 § 2.2-4026 of the Administrative Process Act.

347 I. Any mandated reporter who has reasonable cause to suspect that an adult died as a result of abuse
348 or neglect shall immediately report such suspicion to the appropriate medical examiner and to the
349 appropriate law-enforcement agency, notwithstanding the existence of a death certificate signed by a
350 licensed physician. The medical examiner and the law-enforcement agency shall receive the report and
351 determine if an investigation is warranted. The medical examiner may order an autopsy. If an autopsy is
352 conducted, the medical examiner shall report the findings to law enforcement, as appropriate, and to the
353 local department or to the adult protective services hotline.

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

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