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SENATE BILL NO. 1297

Offered January 13, 2021

Prefiled January 11, 2021

A *BILL to amend and reenact §§ 63.2-1603 and 63.2-1609 of the Code of Virginia, relating to emergency order for adult protective services; acts of violence, force, or threat or financial exploitation; penalty.*

Patrons—Obenshain, Mason and Surovell

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1603 and 63.2-1609 of the Code of Virginia are amended and reenacted as follows: § 63.2-1603. Protection of adults; definitions.

As used in this article:

"Adult" means any person 60 years of age or older, or any person 18 years of age or older who is incapacitated and who resides in the Commonwealth; provided, however, "adult" may include qualifying nonresidents who are temporarily in the Commonwealth and who are in need of temporary or emergency protective services.

"Emergency" means (i) that an adult is living in conditions that present a clear and substantial risk of death or immediate and serious physical harm to himself or others or (ii) *that an adult has been, within a reasonable period of time, subjected to an act of violence, force, or threat or been subjected to financial exploitation.*

"Incapacitated person" means any adult who is impaired by reason of mental illness, intellectual disability, physical illness or disability, advanced age or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate or carry out responsible decisions concerning his or her well-being.

§ 63.2-1609. Emergency order for adult protective services.

A. Upon petition by the local department to the circuit court, the court may issue an order authorizing the provision of adult protective services on an emergency basis to an adult after finding on the record, based on a preponderance of the evidence, that:

1. The adult is incapacitated;

2. An emergency exists;

3. The adult lacks the capacity to consent to receive adult protective services; and

4. The proposed order is substantially supported by the findings of the local department that has investigated the case, or if not so supported, there are compelling reasons for ordering services.

B. In issuing an emergency order, the court shall adhere to the following limitations:

1. Only such adult protective services as are necessary to improve or correct the conditions creating the emergency shall be ordered, and the court shall designate the approved services in its order. In ordering adult protective services the court shall consider the right of a person to rely on nonmedical remedial treatment in accordance with a recognized religious method of healing in lieu of medical care.

2. The court shall specifically find in the emergency order whether hospitalization or a change of residence is necessary. Approval of the hospitalization or change of residence shall be stated in the order. No adult may be committed to a mental health facility under this section.

3. Adult protective services may be provided through an appropriate court order only for a period of 15 days. The original order may be renewed once for a five-day period upon a showing to the court that continuation of the original order is necessary to remove the emergency.

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

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

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

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

8. *Upon a finding that the adult has been, within a reasonable period of time, subjected to an act of*

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59 *violence, force, or threat or been subjected to financial exploitation, the court may include in its order*
60 *one or more of the following conditions to be imposed on the alleged perpetrator: (i) prohibition on*
61 *acts of violence, force, or threat or criminal offenses that may result in injury to person or property; (ii)*
62 *prohibition on such other contacts by the alleged perpetrator with the adult or the adult's family or*
63 *household members as the court deems necessary for the health and safety of such persons; or (iii) such*
64 *other conditions as the court deems necessary to prevent (a) acts of violence, force, or threat; (b)*
65 *criminal offenses that may result in injury to persons or property; (c) communication or other contact of*
66 *any kind by the alleged perpetrator; or (d) financial exploitation by the alleged perpetrator. Any person*
67 *who violates a condition imposed pursuant to this subdivision is guilty of a Class 1 misdemeanor.*

68 C. The petition for an emergency order shall set forth the name, address, and interest of the
69 petitioner; the name, age, and address of the adult in need of adult protective services; the nature of the
70 emergency, *including the nature of any acts of violence, force, or threat or financial exploitation; the*
71 *date and location of any acts of violence, force, or threat or financial exploitation;* the nature of the
72 adult's incapacity, if determinable; the proposed adult protective services; the petitioner's reasonable
73 belief, together with facts supportive thereof, as to the existence of the facts stated in subdivisions A 1
74 through A 4; and facts showing the petitioner's attempts to obtain the adult's consent to the services and
75 the outcomes of such attempts.

76 D. Written notice of the time, date, and place for the hearing shall be given to the adult, to his
77 spouse, or if none, to his nearest known next of kin, *and to the alleged perpetrator if the petition*
78 *alleges the adult has been subjected to an act of violence, force, or threat or financial exploitation,* and
79 a copy of the petition shall be attached. Such notice shall be given at least 24 hours prior to the hearing
80 for emergency intervention. The court may waive the 24-hour notice requirement upon showing that (i)
81 immediate and reasonably foreseeable physical harm to the adult or others will result from the 24-hour
82 delay; and (ii) reasonable attempts have been made to notify the adult, his spouse, or if none, his nearest
83 known next of kin, *and the alleged perpetrator if the petition alleges the adult has been subjected to an*
84 *act of violence, force, or threat or financial exploitation.*

85 E. Upon receipt of a petition for an emergency order for adult protective services, the court shall
86 hold a hearing. The adult who is the subject of the petition shall have the right to be present and be
87 represented by counsel at the hearing. If it is determined that the adult is indigent, or, in the
88 determination of the judge, lacks capacity to waive the right to counsel, the court shall locate and
89 appoint a guardian ad litem. If the adult is indigent, the cost of the proceeding shall be borne by the
90 Commonwealth. If the adult is not indigent, the court may order that the cost of the proceeding shall be
91 borne by such adult. This hearing shall be held no earlier than 24 hours *and no later than 72 hours*
92 *after the notice required in subsection D has been given, unless such notice has been waived by the*
93 *court.*

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

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

103 H. If the person continues to need adult protective services after the renewal order provided in
104 subdivision B 3 has expired, the temporary guardian, temporary conservator, or local department shall
105 immediately petition the court to appoint a guardian and, if applicable, a conservator pursuant to Chapter
106 20 (§ 64.2-2000 et seq.) of Title 64.2.