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SENATE BILL NO. 1297

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 12, 2021)

(Patron Prior to Substitute—Senator Obenshain)

A BILL to amend and reenact §§ 63.2-1603, 63.2-1606, 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.

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1603, 63.2-1606, 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:

"Act of violence, force, or threat" means the same as that term is defined in § 19.2-152.7:1.

"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.

"Financial exploitation" means the illegal, unauthorized, improper, or fraudulent use of the funds, property, benefits, resources, or other assets of an adult for another's profit, benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the adult of his rightful use of or access to such funds, property, benefits, resources, or other assets. "Financial exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an intentional failure to use the financial resources of an adult in a manner that results in neglect of such adult; (ii) the acquisition, possession, or control of an adult's financial resources or property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services against his will for another's profit, benefit, or advantage if the adult did not agree, or was tricked, misled, or defrauded into agreeing, to pay for such goods or services.

"Financial institution staff" means any employee, agent, qualified individual, or representative of a bank, trust company, savings institution, loan association, consumer finance company, credit union, investment company, investment advisor, securities firm, accounting firm, or insurance company.

"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.

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

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

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

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

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

4. Any guardian or conservator of an adult;

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

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

7. Any law-enforcement officer.

B. The report shall be made in accordance with subsection A to the local department of the county or city wherein the adult resides or wherein the adult abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline. Nothing in this section shall be construed to eliminate or supersede any other obligation to report as required by law. If a person required to report under this section receives information regarding abuse, neglect or exploitation while providing professional services in a hospital, nursing facility or similar institution, then he may, in lieu of reporting, notify the person in charge of the institution or his designee, who shall report such information, in accordance with the institution's policies and procedures for reporting such matters, immediately upon his determination that there is reason to suspect abuse, neglect or exploitation. Any person required to make the report or notification required by this subsection shall do so either orally or in writing and shall disclose all information that is the basis for the suspicion of adult abuse, neglect or exploitation. Upon request, any person required to make the report shall make available to the adult protective services worker and the local department investigating the reported case of adult abuse, neglect or exploitation any information, records or reports which document the basis for the report. All persons required to report suspected adult abuse, neglect or exploitation shall cooperate with the investigating adult protective services worker of a local department and shall make information, records and reports which are relevant to the investigation available to such worker to the extent permitted by state and federal law. Criminal investigative reports received from law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be subject to public disclosure; such reports may, however, be disclosed to the Adult Fatality Review Team as provided in § 32.1-283.5 or to a local or regional adult fatality review team as provided in § 32.1-283.6 and, if reviewed by the Team or a local or regional adult fatality review team, shall be subject to applicable confidentiality requirements of the Team or a local or regional adult fatality review team.

C. Any financial institution staff who suspects that an adult has been exploited financially may report such suspected financial exploitation and provide supporting information and records to the local department of the county or city wherein the adult resides or wherein the exploitation is believed to have occurred or to the adult protective services hotline. For purposes of this section:

"Financial exploitation" means the illegal, unauthorized, improper, or fraudulent use of the funds, property, benefits, resources, or other assets of an adult, as defined in § 63.2-1603, for another's profit, benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the adult of his rightful use of or access to such funds, property, benefits, resources, or other assets. "Financial exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an intentional failure to use the financial resources of an adult in a manner that results in neglect of such adult; (ii) the acquisition, possession, or control of an adult's financial resources or property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services against his will for another's profit, benefit, or advantage if the adult did not agree, or was tricked, misled, or defrauded into agreeing, to pay for such goods or services.

"Financial institution staff" means any employee, agent, qualified individual, or representative of a bank, trust company, savings institution, loan association, consumer finance company, credit union, investment company, investment advisor, securities firm, accounting firm, or insurance company.

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

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

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

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

H. Any person who fails to make a required report or notification pursuant to subsection A shall be subject to a civil penalty of not more than \$500 for the first failure and not less than \$100 nor more than \$1,000 for any subsequent failures. Civil penalties under subdivision A 7 shall be determined by a court of competent jurisdiction, in its discretion. All other civil penalties under this section shall be

determined by the Commissioner for Aging and Rehabilitative Services or his designee. The Commissioner for Aging and Rehabilitative Services shall establish by regulation a process for imposing and collecting civil penalties, and a process for appeal of the imposition of such penalty pursuant to § 2.2-4026 of the Administrative Process Act.

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

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

K. 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 adult abuse, neglect and exploitation.

L. Financial institution staff may refuse to execute a transaction, may delay a transaction, or may refuse to disburse funds if the financial institution staff (i) believes in good faith that the transaction or disbursement may involve, facilitate, result in, or contribute to the financial exploitation of an adult or (ii) makes, or has actual knowledge that another person has made, a report to the local department or adult protective services hotline stating a good faith belief that the transaction or disbursement may involve, facilitate, result in, or contribute to the financial exploitation of an adult. The financial institution staff may continue to refuse to execute a transaction, delay a transaction, or refuse to disburse funds for a period no longer than 30 business days after the date upon which such transaction or disbursement was initially requested based on a good faith belief that the transaction or disbursement may involve, facilitate, result in, or contribute to the financial exploitation of an adult, unless otherwise ordered by a court of competent jurisdiction. Upon refusing to execute a transaction, delaying a transaction, or refusing to disburse funds, the financial institution shall report such refusal or delay within five business days to the local department or the adult protective services hotline. Upon request, and to the extent permitted by state and federal law, financial institution staff making a report to the local department of social services may report any information or records relevant to the report or investigation. Absent gross negligence or willful misconduct, the financial institution and its staff shall be immune from civil or criminal liability for refusing to execute a transaction, delaying a transaction, or refusing to disburse funds pursuant to this subsection. The authority of a financial institution staff to refuse to execute a transaction, to delay a transaction, or to refuse to disburse funds pursuant to this subsection shall not be contingent upon whether financial institution staff has reported suspected financial exploitation of the adult pursuant to subsection C.

§ 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.

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

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

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

191 8. *Upon a finding that the adult has been, within a reasonable period of time, subjected to an act of*
192 *violence, force, or threat or been subjected to financial exploitation, the court may include in its order*
193 *one or more of the following conditions to be imposed on the alleged perpetrator: (i) prohibition on*
194 *acts of violence, force, or threat or criminal offenses that may result in injury to person or property; (ii)*
195 *prohibition on such other contacts by the alleged perpetrator with the adult or the adult's family or*
196 *household members as the court deems necessary for the health and safety of such persons; or (iii) such*
197 *other conditions as the court deems necessary to prevent (a) acts of violence, force, or threat; (b)*
198 *criminal offenses that may result in injury to persons or property; (c) communication or other contact of*
199 *any kind by the alleged perpetrator; or (d) financial exploitation by the alleged perpetrator. Any person*
200 *who violates a condition imposed pursuant to this subdivision is guilty of a Class 1 misdemeanor.*

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

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

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

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

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

236 H. If the person continues to need adult protective services after the renewal order provided in
237 subdivision B 3 has expired, the temporary guardian, temporary conservator, or local department shall
238 immediately petition the court to appoint a guardian and, if applicable, a conservator pursuant to Chapter
239 20 (§ 64.2-2000 et seq.) of Title 64.2.

240 I. *If the court finds the adult has been, within a reasonable period of time, subjected to an act of*
241 *violence, force, or threat or been subjected to financial exploitation and enters an order containing any*
242 *of the conditions permitted pursuant to subdivision B 8, the clerk of the circuit court shall forthwith*
243 *forward an attested copy of the order containing the perpetrator's identifying information and the name,*
244 *date of birth, sex, and race of each protected person provided to the court to the primary*

245 law-enforcement agency providing service and entry of protective orders and, upon receipt of the order,
246 the primary law-enforcement agency shall enter the name of the person subject to the order and other
247 appropriate information required by the Department of State Police into the Virginia Criminal
248 Information Network established and maintained by the Department of State Police pursuant to Chapter
249 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the perpetrator in person as
250 provided in § 16.1-264. Upon service, the agency making service shall enter the date and time of service
251 and other appropriate information required by the Department of State Police into the Virginia Criminal
252 Information Network and make due return to the court.

253 Upon receipt of the return of service or other proof of service pursuant to subsection C of
254 § 16.1-264, the clerk shall forthwith forward an attested copy of the order to the primary
255 law-enforcement agency and the agency shall forthwith verify and enter any modification as necessary
256 into the Virginia Criminal Information Network as described in this subsection. If the order is later set
257 aside or modified, a copy of such order shall also be attested, forwarded forthwith to the primary
258 law-enforcement agency responsible for service and entry of protective orders and, upon receipt of the
259 order by the primary law-enforcement agency, the agency shall forthwith verify and enter any
260 modification as necessary to the identifying information and other appropriate information required by
261 the Department of State Police into the Virginia Criminal Information Network as described in this
262 subsection, and the order shall be served forthwith and due return made to the court.