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HOUSE BILL NO. 98

Offered January 12, 2022

Prefiled January 6, 2022

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.

Patron—Head

Committee Referral Pending

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, the Virginia Criminal Sentencing 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

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59 (§ 2.2-307 et seq.);

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

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

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

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

78 **§ 51.5-148. Establishment of Adult Protective Services Unit; powers and duties.**

79 A. The Department shall have responsibility for the planning and oversight of adult protective
80 services in the Commonwealth. The Commissioner shall establish within the Department for Aging and
81 Rehabilitative Services an Adult Protective Services Unit ~~which~~ *that* shall oversee the planning,
82 administration, and implementation of adult protective services in the Commonwealth. Adult protective
83 services shall be provided to the public by local departments of social services pursuant to Chapter 16
84 (§ 63.2-1600 et seq.) of Title 63.2 in cooperation with the Department and subject to the regulations and
85 oversight of the Commissioner.

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

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

89 2. To assist local departments of social services in developing and implementing programs to respond
90 to and prevent adult abuse, neglect, or exploitation;

91 3. To prepare, disseminate, and present educational programs and materials on adult abuse, neglect,
92 and exploitation to mandated reporters and the public;

93 4. To establish minimum standards of training and provide educational opportunities to qualify
94 workers in the field of adult protective services to determine whether reports of adult abuse, neglect, or
95 exploitation are substantiated. The Department shall establish and provide a uniform training program for
96 adult protective services workers in the Commonwealth. All adult protective services workers shall
97 complete such training within one year from the date of implementation of the training program or
98 within the first year of their employment;

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

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

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

104 8. To provide coordination among the adult protective services program and other state agencies; ~~and~~

105 9. To work collaboratively with other agencies in the Commonwealth to facilitate the reporting and
106 investigation of suspected adult abuse, neglect, or exploitation; *and*

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

109 **§ 51.5-148.1. Central registry; retention of records; notice; reports made in bad faith or with**
110 **malicious intent.**

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

116 B. *The Department shall maintain all reports regarding investigations in which a report was deemed*
117 *unfounded and all reports determined to be not valid in a record that is separate from the central*
118 *registry and accessible only by the Department and local departments for adult protective services and*
119 *by the person alleged to have committed abuse, neglect, or exploitation. In no event shall the mere*
120 *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.

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

182 5. Any other criminal activity involving abuse or neglect that places the adult in imminent danger of
183 death or serious bodily harm.

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

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

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

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

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

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

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

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

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

218 1. Assist the local department in identifying abused, neglected, and exploited adults as defined in
219 § 63.2-1603.

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

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

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

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

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

238 **§ 63.2-1605.1. Investigations by local departments.**

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

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

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

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 adult abuse, neglect, and exploitation information 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 adult abuse, neglect, and exploitation information system maintained by the Department for Aging and Rehabilitative Services, 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

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

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

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

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

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

348 C. Whenever an appeal of the local department's finding is made and a criminal charge or
349 investigation is also filed or commenced against the appellant for the same conduct involving the same
350 victim as investigated by the local department, the appeal process shall automatically be stayed until the
351 criminal prosecution in the trial court is completed, until the criminal investigation is closed, or, in the
352 case of a criminal investigation that is not completed within 180 days of the appellant's request for an
353 appeal of the local department's finding, for 180 days after the appellant's request for appeal. During
354 such stay, the appellant's right of access to the records of the local department regarding the matter
355 being appealed shall also be stayed. Once the criminal prosecution in the trial court has been
356 completed, the criminal investigation is closed, or, in the case of a criminal investigation that is not
357 completed within 180 days of the appellant's request for an appeal of the local department's finding,
358 180 days have passed, the local department shall advise the appellant in writing of his right to resume
359 his appeal within the time frames provided by law and regulation.

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