

SENATE BILL NO. 1297

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on \_\_\_\_\_)

(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"

27 includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an intentional  
28 failure to use the financial resources of an adult in a manner that results in neglect of such adult; (ii) the  
29 acquisition, possession, or control of an adult's financial resources or property through the use of undue  
30 influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services against  
31 his will for another's profit, benefit, or advantage if the adult did not agree, or was tricked, misled, or  
32 defrauded into agreeing, to pay for such goods or services.

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

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

40 **§ 63.2-1606. Protection of aged or incapacitated adults; mandated and voluntary reporting.**

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

- 48 1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503,  
49 with the exception of persons licensed by the Board of Veterinary Medicine;
- 50 2. Any mental health services provider as defined in § 54.1-2400.1;
- 51 3. Any emergency medical services provider certified by the Board of Health pursuant to § 32.1-  
52 111.5, unless such provider immediately reports the suspected abuse, neglect or exploitation directly to

53 the attending physician at the hospital to which the adult is transported, who shall make such report  
54 forthwith;

55 4. Any guardian or conservator of an adult;

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

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

60 7. Any law-enforcement officer.

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

80 Review Team as provided in § 32.1-283.5 or to a local or regional adult fatality review team as provided  
81 in § 32.1-283.6 and, if reviewed by the Team or a local or regional adult fatality review team, shall be  
82 subject to applicable confidentiality requirements of the Team or a local or regional adult fatality review  
83 team.

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

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

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

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

105 E. Any person who makes a report or provides records or information pursuant to subsection A,  
106 C, or D, or who testifies in any judicial proceeding arising from such report, records or information, or

107 who takes or causes to be taken with the adult's or the adult's legal representative's informed consent  
108 photographs, video recordings, or appropriate medical imaging of the adult who is subject of a report shall  
109 be immune from any civil or criminal liability on account of such report, records, information,  
110 photographs, video recordings, appropriate medical imaging or testimony, unless such person acted in bad  
111 faith or with a malicious purpose.

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

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

118 H. Any person who fails to make a required report or notification pursuant to subsection A shall  
119 be subject to a civil penalty of not more than \$500 for the first failure and not less than \$100 nor more  
120 than \$1,000 for any subsequent failures. Civil penalties under subdivision A 7 shall be determined by a  
121 court of competent jurisdiction, in its discretion. All other civil penalties under this section shall be  
122 determined by the Commissioner for Aging and Rehabilitative Services or his designee. The  
123 Commissioner for Aging and Rehabilitative Services shall establish by regulation a process for imposing  
124 and collecting civil penalties, and a process for appeal of the imposition of such penalty pursuant to § 2.2-  
125 4026 of the Administrative Process Act.

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

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

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

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

159 C.

160 § 63.2-1609. Emergency order for adult protective services.

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

- 164 1. The adult is incapacitated;
- 165 2. An emergency exists;
- 166 3. The adult lacks the capacity to consent to receive adult protective services; and
- 167 4. The proposed order is substantially supported by the findings of the local department that has  
168 investigated the case, or if not so supported, there are compelling reasons for ordering services.

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

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

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

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

180 4. In its order the court shall appoint the petitioner or another interested person, as temporary  
181 guardian of the adult with responsibility for the adult's welfare and authority to give consent for the adult  
182 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  
192 of 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 acts  
194 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) criminal  
198 offenses that may result in injury to persons or property; (c) communication or other contact of any kind  
199 by the alleged perpetrator; or (d) financial exploitation by the alleged perpetrator. Any person who violates  
200 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 date  
204 and location of any acts of violence, force, or threat or financial exploitation; the nature of the adult's  
205 incapacity, if determinable; the proposed adult protective services; the petitioner's reasonable belief,  
206 together with facts supportive thereof, as to the existence of the facts stated in subdivisions A 1 through  
207 A 4; and facts showing the petitioner's attempts to obtain the adult's consent to the services and the  
208 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 alleges  
211 the adult has been subjected to an act of violence, force, or threat or financial exploitation, and a copy of  
212 the petition shall be attached. Such notice shall be given at least 24 hours prior to the hearing for

213 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 act  
217 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 determination  
221 of the judge, lacks capacity to waive the right to counsel, the court shall locate and appoint a guardian ad  
222 litem. If the adult is indigent, the cost of the proceeding shall be borne by the Commonwealth. If the adult  
223 is not indigent, the court may order that the cost of the proceeding shall be borne by such adult. This  
224 hearing shall be held no earlier than 24 hours and no later than 72 hours after the notice required in  
225 subsection D has been given, unless such notice has been waived by the court.

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

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

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

238 I. If the court finds the adult has been, within a reasonable period of time, subjected to an act of  
239 violence, force, or threat or been subjected to financial exploitation and enters an order containing any of

240 the conditions permitted pursuant to subdivision B 8, the clerk of the circuit court shall forthwith forward  
241 an attested copy of the order containing the perpetrator's identifying information and the name, date of  
242 birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency  
243 providing service and entry of protective orders and, upon receipt of the order, the primary law-  
244 enforcement agency shall enter the name of the person subject to the order and other appropriate  
245 information required by the Department of State Police into the Virginia Criminal Information Network  
246 established and maintained by the Department of State Police pursuant to Chapter 2 (§ 52-12 et seq.) of  
247 Title 52 and the order shall be served forthwith on the perpetrator in person as provided in § 16.1-264.  
248 Upon service, the agency making service shall enter the date and time of service and other appropriate  
249 information required by the Department of State Police into the Virginia Criminal Information Network  
250 and make due return to the court.

251 Upon receipt of the return of service or other proof of service pursuant to subsection C of § 16.1-  
252 264, the clerk shall forthwith forward an attested copy of the order to the primary law-enforcement agency  
253 and the agency shall forthwith verify and enter any modification as necessary into the Virginia Criminal  
254 Information Network as described in this subsection. If the order is later set aside or modified, a copy of  
255 such order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible  
256 for service and entry of protective orders and, upon receipt of the order by the primary law-enforcement  
257 agency, the agency shall forthwith verify and enter any modification as necessary to the identifying  
258 information and other appropriate information required by the Department of State Police into the Virginia  
259 Criminal Information Network as described in this subsection, and the order shall be served forthwith and  
260 due return made to the court.

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