

HOUSE BILL NO. 2063

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Glass)

A BILL to amend and reenact §§ 6.2-103.1 and 64.2-2003 of the Code of Virginia, relating to appointment of guardian ad litem; requested information, records, or reports from an individual or entity.

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-103.1 and 64.2-2003 of the Code of Virginia are amended and reenacted as follows:

§ 6.2-103.1. Financial institutions to furnish certain information as part of adult protective services investigation.

Notwithstanding any other provision of law, any financial institution subject to the provisions of this title shall cooperate in any investigation of alleged adult abuse, neglect, or exploitation conducted by a local department of social services pursuant to Chapter 16 (§ 63.2-1600 et seq.) of Title 63.2 and shall make any financial records or information relevant to such investigation available to the local department and to any court-appointed guardian ad litem for the adult who is the subject of such adult protective services investigation upon request to the extent allowed under the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.) and 12 U.S.C. § 3403. Absent gross negligence or willful misconduct, any financial institution and its staff shall be immune from civil or criminal liability for providing information or records to the local department of social services or to a court-appointed guardian ad litem pursuant to this section.

§ 64.2-2003. Appointment of guardian ad litem.

A. On the filing of every petition for guardianship or conservatorship, the court shall appoint a guardian ad litem to represent the interests of the respondent. The guardian ad litem shall be paid a fee that is fixed by the court to be paid by the petitioner or taxed as costs, as the court directs.

B. Duties of the guardian ad litem include (i) personally visiting the respondent; (ii) advising the respondent of rights pursuant to §§ 64.2-2006 and 64.2-2007 and certifying to the court that the respondent

27 has been so advised; (iii) recommending that legal counsel be appointed for the respondent, pursuant to §
28 64.2-2006, if the guardian ad litem believes that counsel for the respondent is necessary; (iv) notifying the
29 court as soon as practicable if the respondent requests counsel regardless of whether the guardian ad litem
30 recommends counsel; (v) investigating the petition and evidence, requesting additional evaluation if
31 necessary, considering whether a less restrictive alternative to guardianship or conservatorship is
32 available, including the use of an advance directive, supported decision-making agreement, or durable
33 power of attorney, and filing a report pursuant to subsection C; and (vi) personally appearing at all court
34 proceedings and conferences. If the respondent is between 17 and a half and 21 years of age and has an
35 Individualized Education Plan (IEP) and transition plan, the guardian ad litem shall review such IEP and
36 transition plan and include the results of his review in the report required by clause (v).

37 C. In the report required by clause (v) of subsection B, the guardian ad litem shall address the
38 following major areas of concern: (i) whether the court has jurisdiction; (ii) whether a guardian or
39 conservator is needed based on evaluations and reviews conducted pursuant to subsection B; (iii) the
40 extent of the duties and powers of the guardian or conservator; (iv) the propriety and suitability of the
41 person selected as guardian or conservator after consideration of the person's geographic location, familial
42 or other relationship with the respondent, ability to carry out the powers and duties of the office,
43 commitment to promoting the respondent's welfare, any potential conflicts of interests, wishes of the
44 respondent, and recommendations of relatives; (v) a recommendation as to the amount of surety on the
45 conservator's bond, if any; and (vi) consideration of proper residential placement of the respondent. The
46 report shall also contain an explanation by the guardian ad litem as to any (a) decision not to recommend
47 the appointment of counsel for the respondent, (b) determination that a less restrictive alternative to
48 guardianship or conservatorship is not advisable, and (c) determination that appointment of a limited
49 guardian or conservator is not appropriate.

50 D. Any individual or entity with information, records, or reports relevant to a guardianship or
51 conservatorship proceeding, including any health care provider—and, local school division, local
52 department of social services, financial institution, investment advisor, or financial service provider and
53 criminal justice agencies of the Commonwealth, as defined by §§ 6.2-100, 8.4-105, 9.1-101, and 13.1-

54 501, shall disclose or make available to the guardian ad litem, upon request, any information, records, and
55 reports concerning the respondent that the guardian ad litem determines necessary to perform his duties
56 under this section to the extent allowed under the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.) and
57 12 U.S.C. § 3403. The request from the guardian ad litem shall be accompanied by a copy of the court
58 order (i) appointing the guardian ad litem for the respondent and (ii) that allows the release of the
59 respondent's nonpublic personal information to the guardian ad litem. All such information, records, and
60 reports shall be provided to the guardian ad litem at no charge. Disclosures, records, and reports can be
61 provided in electronic form to the guardian ad litem and may be accompanied by a statement of expenses
62 or an invoice, which shall be filed with the report of the guardian ad litem to be considered by the court
63 when awarding costs among the parties pursuant to § 64.2-2008. Absent gross negligence or willful
64 misconduct, the person or entity making disclosures, and their staff, shall be immune from civil or criminal
65 liability for providing information or records to a court-appointed guardian ad litem pursuant to this
66 section.

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