
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 503

Session of
1983

INTRODUCED BY COWELL, IRVIS, MARKOSEK, MAYERNIK AND ITKIN,
MARCH 21, 1983

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, MARCH 21, 1983

AN ACT

1 Relating to the protection of the abused, neglected, exploited
2 or abandoned elderly; establishing a uniform Statewide
3 reporting and investigative system for suspected abuse,
4 neglect, exploitation or abandonment of the elderly; and
5 providing protective services.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Protection of
10 the Elderly Act.

11 Section 2. Definitions.

12 The following words and phrases when used in this act shall
13 have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "Abandonment." The desertion or willful forsaking of an
16 elderly person by a caretaker.

17 "Abuse." The willful infliction of injury, unreasonable
18 confinement, intimidation or punishment with resulting physical
19 harm, pain or mental anguish; or the willful deprivation by a

1 caretaker of goods or services which are necessary to maintain
2 physical or mental health; or sexual harassment, abuse, as
3 defined in the act of October 7, 1976 (P.L.1090, No.218), known
4 as the Protection From Abuse Act, or rape.

5 "Agency." A designated area agency on aging.

6 "Caretaker." An individual or institution who has assumed
7 the responsibility for the care of an elderly person, either
8 voluntarily, by contract, by receipt of payment for care, as a
9 result of family relationship or by order of a court of
10 competent jurisdiction.

11 "Department." The Department of Aging.

12 "Elderly person." Any resident of this Commonwealth who is
13 60 years of age or older.

14 "Exploitation." The illegal or improper act or process of
15 taking advantage of an elderly person by a caretaker or other
16 person for monetary, personal or other benefit, profit or gain.
17 Mismanagement of the estate of an elderly person which results
18 in no benefit, profit or gain to the caretaker may be considered
19 exploitation within the meaning of this section if it results in
20 substantial loss to the elderly person.

21 "Incompetent person." Any elderly person for whom a guardian
22 has been appointed by the court under 20 Pa.C.S. Ch. 55
23 (relating to incompetents).

24 "In need of protective services." An elderly person, unable
25 to perform or obtain services which are necessary to maintain
26 physical and mental health, for whom there is no responsible
27 caretaker and who is at imminent risk of abuse, neglect,
28 exploitation or abandonment.

29 "Multidisciplinary geriatric assessment." Including social,
30 physical and psychological findings along with a description of

1 the current resources and needs of the person.

2 "Neglect." The failure to provide for oneself the goods or
3 services which are necessary to maintain physical or mental
4 health or the failure of a caretaker to provide the goods or
5 services.

6 "Protective services." The array of preventive, supportive
7 or surrogate services for the elderly provided by the
8 Commonwealth or other governmental or private organizations
9 within the limits of available resources to avoid abuse,
10 neglect, exploitation or abandonment.

11 "Protective service provider." The agency designated by the
12 area agency on aging to provide protective services.

13 "Services which are necessary to maintain physical and mental
14 health." Includes, but is not limited to, the provision of care
15 for physical and mental health needs, the relocation of elderly
16 persons to facilities or institutions able to offer such care,
17 assistance in personal hygiene, food, clothing, adequately
18 heated and ventilated shelter, financial management,
19 transportation necessary to secure any of the needs of the
20 elderly and protection from physical abuse. Physical abuse may
21 include, but is not limited to, malnutrition, deprivation of
22 necessities or physical punishment. The term shall not include
23 taking persons into custody without consent except as provided
24 in this act.

25 Section 3. Duty to report; immunity for reporting testimony.

26 (a) Duty imposed.--Any person having reasonable cause to
27 believe that an elderly person is being abused, neglected,
28 exploited, abandoned, or is in need of protective services may
29 report the information to the agency. Any licensed health care
30 professional, attorney or police officer, any employee of a

1 social service, welfare, mental health or health agency or long-
2 term care facility shall report the information to the agency
3 within five calendar days.

4 (b) Contents of report.--The report shall contain the name
5 and address of the elderly person, information regarding the
6 nature and extent of the abuse, neglect, exploitation,
7 abandonment or need for protective services and may include any
8 information which the reporter believes might be helpful to an
9 investigation of the case or the protection of the elderly
10 person.

11 (c) Immunity.--Any person who makes a report or who
12 testifies in any administrative or judicial proceeding arising
13 out of a report shall be immune from any civil or criminal
14 liability on account of the report or testimony, except for
15 liability for perjury, unless the person acted in bad faith or
16 with malicious purpose.

17 Section 4. Mandate to receiving agency.

18 (a) Investigation of reports.--The agency shall designate a
19 person to be responsible to fully investigate each report made
20 pursuant to section 3. Responsibility shall not be vested with a
21 person who provides protective services. Upon specific petition
22 by the agency, the department may issue a waiver to this
23 requirement. The petition filed, and the waiver granted, must
24 specify the manner in which the intent of this section is met,
25 including the guarantee that the due process rights of the
26 elderly person, the reporter and the alleged abuser are
27 protected. The investigation shall be initiated within three
28 working days of receipt of the report.

29 (b) Unsubstantiated reports.--If after investigation by the
30 agency, the report is deemed to be unsubstantiated and the case

1 is closed, all information identifying the reporter and the
2 alleged abuser shall be immediately deleted from all records. It
3 is not the intention of this section to prevent the agency from
4 maintaining records in a way which may serve to substantiate a
5 pattern of abuse.

6 (c) Geriatric assessment.--If the report is verified by the
7 agency, the agency shall provide for a timely multidisciplinary
8 geriatric assessment. Upon completion of this evaluation,
9 written findings shall be prepared which include recommended
10 action. This service plan shall provide for the least
11 restrictive alternative, encouraging client self determination
12 and continuity of care.

13 (d) Information not subject to disclosure.--Neither the
14 original report nor the multidisciplinary geriatric assessment
15 shall be deemed a public record or be subject to the provisions
16 of the act of June 21, 1957 (P.L.390, No.212), referred to as
17 the Right-to-Know Law. The name of the person making the
18 original report or any person mentioned in the report shall not
19 be disclosed to anyone outside the agency except to a court of
20 competent jurisdiction or pursuant to a court order.

21 Section 5. Access to records.

22 (a) Access by agency.--The agency, in the investigation of
23 reported abuse pursuant to section 4, shall have access to all
24 relevant records. If access to records is denied, the agency may
25 petition the designated court for an order enjoining the keeper
26 of relevant records from preventing inspection of the records by
27 the agency. The petition shall allege specific facts that:

28 (1) There is evidence to prove that access to records
29 has been denied after a formal request was made by the
30 agency.

(2) There is reasonable cause to believe that the records requested may include information pertinent to the specific determination of need for protective services.

(b) Court ordered access.--If the court finds that access to relevant records has been denied to the agency, the court may issue an order allowing the agency to inspect those relevant records. Information discovered in the course of the investigation shall not be disclosed to anyone outside the agency except to a court of competent jurisdiction or pursuant to a court order.

(c) Access by law enforcement officials.--Law enforcement officials in the course of investigating cases of homicide, sexual abuse, exploitation or serious bodily injury as defined in 18 Pa.C.S. § 2301 (relating to definitions) shall have access to all relevant records maintained by the agency.

Section 6. Provision of services by agency; injunction against interference by caretaker.

(a) Agency to provide services.--Upon receipt of the multidisciplinary geriatric assessment and the service plan, the agency shall provide for available services which are reasonable and necessary within its existing resources through the protective service provider or other appropriate provider, if the elderly person consents to those services.

(b) Termination of services.--If an elderly person does not consent to the receipt of reasonable and necessary protective services, or if the elderly person withdraws consent, services shall not be provided or continued. If the person lacks the capacity to consent, the agency may seek court authorization to provide necessary services, as provided in section 7.

(c) Refusal by caretaker to allow services.--If the

1 caretaker of an elderly person who has consented to the receipt
2 of reasonable and necessary protective services refuses to allow
3 the provision of those services to the elderly person, the
4 agency may petition the designated court for an order enjoining
5 the caretaker from interfering with the provision of protective
6 services to the elderly person. The petition shall allege
7 specific facts that:

8 (1) There is reasonable cause to suspect that the
9 elderly person in question is or has been abused, neglected,
10 exploited, abandoned or is in need of protective services.

11 (2) Access has been denied to the representatives of the
12 agencies required to investigate, or provide services.

13 (d) Enjoining of caretaker.--If the court finds that the
14 elderly person is in need of services and has been prevented by
15 the caretaker from receiving those services, the court may issue
16 an order enjoining the caretaker from interfering with the
17 investigation or the provision of services to the elderly
18 person.

19 Section 7. Nonemergency involuntary intervention.

20 (a) Appointment of guardian.--If the agency finds that an
21 elderly person is being abused, neglected, exploited, abandoned
22 or is in need of protective services and believes that the
23 person lacks the capacity to consent to reasonable and necessary
24 protective services, the agency may petition the court for
25 appointment of a guardian pursuant to the provisions of Title 20
26 of the Pennsylvania Consolidated Statutes (relating to
27 decedents, estates and fiduciaries). The court may determine
28 that the agency or the protective service provider shall be
29 appointed as the guardian.

30 (b) Order of court.--In ordering guardianship and

1 involuntary protective services, the court shall authorize only
2 that intervention which it finds to be least restrictive of the
3 elderly person's liberty and rights, which shall promote the
4 elderly person's continued residence at home and in the
5 community where feasible and which honors as much as possible
6 the person's preferences. The court shall specifically state in
7 its order what powers and duties the guardian shall have and
8 shall limit the powers of the guardian to those areas where the
9 elderly person has shown incompetency to act. A plan of services
10 to the person shall be developed by the protective service
11 provider and submitted to the court for approval. Any change in
12 this plan or powers of the guardian shall be approved by the
13 court. The basis for the findings shall be stated in the record.
14 The court shall limit the guardianship to six months or less.
15 Upon further petition to the court, the terms of the
16 guardianship may be extended, modified or terminated.

17 (c) Notice of proceedings.--Adequate written notice of all
18 proceedings shall be given to the elderly person. The agency
19 shall verbally communicate the contents of the petition and the
20 proposed plan to the elderly person, and make available a
21 written petition and plan. The notice shall state that the
22 elderly person has the right to legal counsel and the right to
23 appear and give testimony before the court. If the elderly
24 person is unwilling or unable to select legal counsel, the court
25 shall appoint legal counsel.

26 (d) Appearance by elderly person.--The elderly person shall
27 appear before the court unless a medical doctor, psychiatrist or
28 licensed psychologist appears in court and states beyond a
29 reasonable doubt that an appearance before the court will be
30 detrimental to the person's health or safety. If the court has

1 reason to believe that the elderly person is able to communicate
2 and is absent because of a physical impairment, the court shall
3 make provisions to receive that person's testimony.

4 (e) Right to present testimony.--The elderly person shall
5 have the right to present testimony.

6 (f) Payment for services.--The elderly person shall not be
7 required to pay for involuntary protective services, legal
8 counsel, court costs or expert testimony, unless payment is
9 authorized by the court upon a showing that the person is
10 financially able to pay. The court shall order reimbursement to
11 the agency of the reasonable costs of services by the elderly
12 person.

13 Section 8. Emergency involuntary intervention.

14 (a) Court order for emergency services.--The court may issue
15 an order which shall expire at the close of the next business
16 day of the court, where there is clear and convincing evidence
17 that the elderly person lacks the capacity to consent, and where
18 if the services are not provided, the person to be protected
19 will incur a substantial risk of death or serious physical harm
20 within 72 hours. If a court order is issued, emergency services
21 shall be provided for by the agency.

22 (b) Petition.--The petition for emergency services shall be
23 brought in the name of the agency. The petition shall set forth:

24 (1) The name and address of the petitioner.

25 (2) A statement of the reasonable belief of the
26 petitioner as to the conditions of the elderly person to be
27 protected.

28 (3) The conditions creating the emergency.

29 (4) The emergency services sought.

30 (5) Facts showing the petitioner's attempts to obtain

1 the consent of the elderly person to be protected by the
2 services.

3 (c) Order limited to necessary emergency services.--The
4 court after finding clear and convincing evidence of an
5 emergency, shall order only the emergency services that are
6 necessary to remove the conditions creating the emergency.

7 (d) Provision for counsel.--The court shall make certain that
8 the elderly person is provided with legal counsel within two
9 working days of the petitioning for emergency protective
10 services.

11 (e) Termination of emergency services.--The agency, upon
12 termination of the emergency services provided under court
13 order, and based on its determination, shall:

14 (1) obtain written consent from the elderly person and
15 legal counsel to that person for further protective services;

16 (2) petition the court for guardianship pursuant to
17 Title 20 of the Pennsylvania Consolidated Statutes (relating
18 to decedents, estates and fiduciaries);

19 (3) release the person or otherwise terminate the
20 protective service; or

21 (4) petition the court for permission to continue
22 services or retain the person pending a determination of
23 guardianship, which shall be filed within 48 hours.

24 (f) Forcible entry.--Where it is necessary to forcibly enter
25 premises after obtaining a court order, a peace officer shall do
26 so, accompanied by a representative of the agency.

27 (g) Report of services rendered.--When emergency services
28 are rendered, a report of the circumstances, including the time,
29 place, date, factual basis for the need for services and the
30 exact services rendered, shall be made and forwarded to the

1 court.

2 (h) Relief by district justice.--When the court is
3 unavailable from the close of business to the resumption of
4 business of the next court day, a petition may be filed before a
5 district justice who may grant relief if the district justice
6 finds it necessary to protect the person from immediate or
7 irreparable physical injury or death. Any order issued by the
8 district justice shall expire at the close of the next business
9 day of the court. The district justice shall authorize removal
10 to a medical facility only if the person is likely to suffer
11 immediate and irreparable physical injury or death. Limited
12 treatment may be authorized to sustain life, but no further
13 treatment or surgery may be given without an order by the court
14 of common pleas of the county where the person is located.

15 (i) Elderly person to be informed.--Prior to removal to the
16 medical facility, the elderly person shall be informed of the
17 reasons for removal, the services to be provided and the reasons
18 for those services, the reasons for an emergency assessment, the
19 right to communicate with others immediately and the right to
20 legal counsel. The elderly person shall be requested to provide
21 names of persons to be notified, and they shall be contacted by
22 the agency making the petition.

23 (j) Dependents of elderly person.--The agency shall take
24 reasonable steps to assure that while the person is detained,
25 the health and safety needs of any of the person's dependents
26 are met and that personal property and the dwelling the person
27 occupies are secure.

28 Section 9. Immunity from civil and criminal liability.

29 In the absence of willful misconduct or gross negligence, the
30 agency, the director, employees of the agency, protective

1 service agencies or protective service workers shall not be
2 civilly or criminally liable for any decision, action or
3 resulting consequence of decisions or actions when acting under
4 the authority of this act.

5 Section 10. Appeal.

6 Any denial of services by the department or authorized agency
7 under this act may be appealed according to the provisions of
8 the rules and regulations issued by the department pursuant to
9 Article XXII-A of the act of April 9, 1929 (P.L.177, No.175),
10 known as The Administrative Code of 1929.

11 Section 11. Regulations; enforcement.

12 (a) Regulations.--The department shall promulgate the rules
13 and regulations to carry out the provisions of this act, and
14 shall be responsible for presenting to the General Assembly
15 annually a report on the programs and services performed.

16 (b) Enforcement.--This act shall be enforced only after
17 promulgation of regulations by the department, which shall occur
18 no later than six months following the effective date of this
19 act, except that section 3 shall apply when the agency certifies
20 to the department that it is prepared to fulfill its
21 responsibilities. The certification shall be made within 90 days
22 following promulgation of regulations.

23 Section 12. Repeals.

24 All acts and parts of acts are repealed insofar as they are
25 inconsistent with this act.

26 Section 13. Effective date.

27 This act shall take effect immediately.