AN ACT

Amending the act of November 6, 1987 (P.L.381, No.79), entitled "An act relating to the protection of the abused, neglected, exploited or abandoned elderly; establishing a uniform Statewide reporting and investigative system for suspected abuse, neglect, exploitation or abandonment of the elderly; providing protective services; providing for funding; and making repeals," making extensive amendments and adding provisions relating to preliminary provisions, administration, criminal history for employees, reporting suspected abuse by employees and miscellaneous provisions.

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

Section 1. Section 102 of the act of November 6, 1987 (P.L.381, No.79), known as the Older Adults Protective Services Act, renumbered December 18, 1996 (P.L.1125, No.169), is amended to read:

Section 102. Legislative \[policy\] intent.

[It is declared the policy of the Commonwealth of Pennsylvania] The General Assembly finds and declares that:

(1) It is the policy of the Commonwealth that older adults who [lack the capacity to protect themselves and are
at imminent risk] are at risk of abuse, neglect, exploitation or abandonment shall have access to and be provided with services necessary to protect their health, safety and welfare.

(2) It is not the purpose of this act to place restrictions upon the personal liberty of [incapacitated] older adults, but this act should be liberally construed to assure the availability of protective services to all older adults in need of them.

(3) Such services shall safeguard the rights of [incapacitated] older adults while protecting them from abuse, neglect, exploitation and abandonment. [It is the intent of the General Assembly]

(4) The General Assembly intends to provide for the detection and reduction, correction or elimination of abuse, neglect, exploitation and abandonment[,] and to establish a program of protective services for older adults in need of them.

(5) It is the policy of the Commonwealth that convictions for certain offenses that evidence a reckless disregard for the vulnerability of care-dependent populations may legitimately warrant a lifetime ban on employment working with older adults under this act.

(6) It is the policy of the Commonwealth that convictions for certain offenses involving misappropriation or misuse of property or convictions that involve inappropriate or irresponsible behavior may legitimately warrant a time-limited ban on employment working with older adults under this act.

Section 2. Section 103 of the act, amended December 18, 1996
(P.L.1125, No.169) and June 9, 1997 (P.L.160, No.13), is amended
to read:

Section 103. Definitions.

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

"Abandonment." The desertion of an older adult by a
caretaker.

"Abuse." [The occurrence of one or more of the following
acts:

(1) The infliction of injury, unreasonable confinement,
imidation or punishment with resulting physical harm, pain
or mental anguish.

(2) The willful deprivation by a caretaker of goods or
services which are necessary to maintain physical or mental
health.

(3) Sexual harassment, rape or abuse, as defined in the
act of October 7, 1976 (P.L.1090, No.218), known as the
Protection From Abuse Act.

No older adult shall be found to be abused solely on the grounds
of environmental factors which are beyond the control of the
older adult or the caretaker, such as inadequate housing,
furnishings, income, clothing or medical care.] Intentionally,
willfully, knowingly or recklessly causing or attempting to
cause:

(1) Infliction of injury or unreasonable confinement
resulting in serious physical harm or pain.

(2) Intimidation or punishment resulting in mental
anguish.

(3) Verbal and emotional abuse, including use of
language with the intent to demean, ridicule, intimidate or
embarrass that results or could reasonably be expected to
result in mental anguish.

(4) The deprivation by a caretaker of goods or services
which are necessary to maintain physical or mental health.

(5) Sexual abuse including: rape, involuntary deviate
sexual intercourse, sexual assault, statutory sexual assault,
aggravated indecent assault or incest.

(6) Sexual harassment, including: unwelcome sexual
advances, requests for sexual favors and other unwelcome
verbal or physical conduct of a sexual nature.

"Administrator." The person responsible for the
management of a facility. The term includes a
person responsible for employment decisions or an independent
contractor responsible for administration of a facility.

"Agency." The local provider of protective services, which
is the area agency on aging or the agency designated by the area
agency on aging to provide protective services in the area
agency's planning and service area.]

"Agent." A person authorized to act on behalf of an older
adult, including a person acting pursuant to a power of
attorney.

"Applicant." An individual seeking employment or engagement
as an employee.

"Area agency on aging" or "AAA." The single local agency
designated by the Department of Aging within each planning and
service area to administer the delivery of protective services.

"Assessment." The evaluation of an older adult's social,
physical and psychological well-being, along with a description
of the older adult's current resources and needs.
"Care." Services provided to meet an older adult's need for personal care or health care. Services may include homemaker services, assistance with activities of daily living, physical therapy, occupational therapy, speech therapy, medical social services, home-care aide services, companion-care services, private duty nursing services, respiratory therapy, intravenous therapy, in-home dialysis and durable medical equipment services, which are routinely provided unsupervised and which require interaction with the care-dependent person. The term does not include durable medical equipment delivery which requires interaction with the older adult.

"Care-dependent individual." An adult who, due to physical or cognitive disability or impairment, requires assistance to meet needs for food, shelter, clothing, personal care or health care.

"Caretaker." An individual or entity that has assumed the responsibility for the provision of care needed to maintain the physical or mental health of an older adult. This responsibility may arise voluntarily, by contract, by receipt of payment for care, as a result of familial relationship, or by order of a court of competent jurisdiction. It is not the intent of this act to impose responsibility on any individual if such responsibility would not otherwise exist in law.

"Case record." The complete record of the information received and the actions taken by the area agency on aging on each report of need.

"Client assessment." Social, physical and psychological findings along with a description of the person's current resources and needs.
"Consent." Authorization or approval that, where feasible, is obtained in writing.

"Court." A court of common pleas or a district magistrate court, where applicable.

"Department." The Department of Aging of the Commonwealth.

"Employee." An individual who [is employed by a facility. The term includes contract employees who have direct contact with residents or unsupervised access to their personal living quarters. The term includes any person who is employed or who enters into a contractual relationship to provide care to a care-dependent individual for monetary consideration in the individual's place of residence.]:

(1) Is employed by a facility, or the affiliated corporate entity of a facility, or enters into a contractual relationship with a facility, or the affiliated corporate entity of a facility, to provide care to an older adult.

(2) Has unsupervised access to another individual and that individual's living quarters, resources or personal records.

"Exploitation." An act or course of conduct by a caretaker or other person against an older adult or an older adult's resources, without the [informed] consent or authorization of the older adult or with consent or authorization obtained through misrepresentation, coercion or threats of force, [that results] resulting in monetary, personal or other benefit, gain or profit for [the perpetrator] that caretaker or person, or monetary or personal loss to the older adult[.], including an act or course of conduct by an agent that violates the agent's duties to the older adult.

"Facility." Any of the following:
(1) A domiciliary care home as defined in section 2202-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(2) [A home health care agency.] Any of the following entities as defined in section 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act:

(i) A home health care agency.

(ii) A long-term care nursing facility.

(iii) A hospice.

(iv) A home care agency.

(v) A home care registry.

[(3) A long-term care nursing facility as defined in section 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.]

(4) An older adult daily living center as defined in section 2 of the act of July 11, 1990 (P.L.499, No.118), known as the Older Adult Daily Living Centers Licensing Act.


(6) An assisted living residence as defined in section 1001 of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.


(8) Any other public or private organization, or entity or part of an organization or entity, that uses public funds.
and is paid, in part, to provide care to care-dependent
individuals.

The term does not include an entity licensed by the Department
of Health or the Department of Drug and Alcohol Programs to
provide drug and alcohol addiction treatment services or an
entity licensed by the Department of Human Services.

"Financial institution." Any of the following:

(1) A national banking association.
(2) A State banking institution.
(3) Any other state bank that maintains a branch in this
Commonwealth.
(4) A credit union that is organized under the laws of
this Commonwealth or of the United States.
(5) A savings and loan association that is organized
under the laws of this Commonwealth or of the United States.

"Home health care agency." Any of the following:

(1) A home health care organization or agency licensed
by the Department of Health.
(2) A public or private agency or organization, or part
of an agency or organization, which provides care to a care-
dependent individual in the individual's place of residence.]

"Incident reporting system." Home and Community Services
Information System (HCSIS) or its successor.

"Intimidation." An act or omission by any person or entity
toward another person [which is intended to, or with knowledge
that the act or omission will, obstruct, impede, impair, prevent
or interfere] that obstructs, impedes, impairs, prevents or
interferes with the administration of this act or any other law
intended to protect older adults from mistreatment.

"Law enforcement official." Any of the following:
(1) A police officer of a municipality.

(1.1) A peace officer, as defined in 18 Pa.C.S. § 501 (relating to definitions).

(2) A district attorney.

(3) The Pennsylvania State Police.


(5) The United States Department of Justice and other Federal law enforcement agencies.

(6) A law enforcement authority in another state.

"Mandatory reporter." Any of the following:

(1) Facility employee or administrator.

(2) Physician or other licensed or certified health care professional.

"Neglect." The failure to provide for oneself or the failure of a caretaker to provide goods or services essential to avoid a clear and serious threat to physical or mental health. [No older adult who does not consent to the provision of protective services shall be found to be neglected solely on the grounds of environmental factors which are beyond the control of the older adult or the caretaker, such as inadequate housing, furnishings, income, clothing or medical care.]

"Older adult." [A person] An individual within the jurisdiction of [the] this Commonwealth who is 60 years of age or older.

"Older adult in need of protective services." An [incapacitated] older adult who is unable to perform or obtain services that are necessary to maintain physical or mental health, for whom there is no responsible caretaker and who is at imminent risk of danger to his person or property.

"Protective services." Those activities, resources and
supports provided to older adults under this act to detect,
prevent, reduce or eliminate abuse, neglect, exploitation and
abandonment.

"Protective setting." A setting chosen by the agency where
services can be provided in the least restrictive environment to
protect the physical and mental well-being of the older adult.]
"Recipient." An individual who receives care, services or
treatment in or from a facility.
"Secretary." The Secretary of Aging of the Commonwealth.
"Serious bodily injury." Injury which creates a substantial
risk of death or which causes serious permanent disfigurement or
protracted loss or impairment of the function of a body member
or organ.
"Serious financial harm." A financial loss that is likely to
result in the inability of an older adult to fund basic
necessities, including, but not limited to, food, shelter,
utilities, medication, health care and long-term care services
and supports.
"Serious physical injury." An injury that:
(1) causes a person severe pain; or
(2) significantly impairs a person's physical functioning,
either temporarily or permanently.
"Service plan." A written plan [developed]:
(1) Developed by the [agency] area agency on aging on
the basis of comprehensive assessment of [a client's need
which describes identified needs, goals to be achieved and
specific services to support goal attainment, with regular
follow-up and predetermined reassessment of client progress.
Specific services to support goal attainment may include, but
is not limited to, homemaker services, home-delivered meals,
attendant care, other in-home services, emergency shelter or
food, legal aid services, transportation and other such
services. Service plans are cooperatively developed by the
agency staff, the client or the client's appointed guardian,
and other family members when appropriate. The plan shall
also address, where applicable, special needs of other
members of the household unit as they may affect the older
adult's need for protective services.

(2) That includes regular follow-up and predetermined
reassessment of progress.

(3) In which the specific services support goal attainment
and may include, but need not be limited to:

(i) Homemaker services.
(ii) Home-delivered meals.
(iii) Personal care.
(iv) Other in-home services.
(v) Emergency shelter or food.
(vi) Legal aid services.
(vii) Transportation.
(viii) Other such services.

(4) Cooperatively developed by the area agency on aging
staff, the older adult or his legal representative, and other
family members, when appropriate.

(5) That addresses special needs of other members of the
household unit if they affect the older adult's need for
protective services.

"Sexual abuse." Intentionally, knowingly or recklessly
causing or attempting to cause rape, involuntary deviate sexual
intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest.

"Suspicious death." A death which is unexpected with unexplained circumstances or cause.

Section 3. Section 301 of the act, amended December 18, 1996 (P.L.1125, No.169), is amended to read:

Section 301. Duties of department and area agencies on aging.

(a) Public information and interdepartmental consultation.--

The department shall conduct an ongoing campaign designed to inform and educate older adults, professionals and the general public about the need for [an] and the availability of protective services under this [chapter] act. The department shall consult with other [departments of the Commonwealth] State agencies on the design and implementation of the ongoing public awareness campaign. The department shall also consider the concerns of area agencies on aging and the entities identified by them under subsection (c).

(b) Staff training.--

(1) The department shall establish minimum standards of training and experience [which] that protective services providers funded by the department shall be required to follow in the selection and assignment of staff for the provision of protective services.

(2) The department shall establish a training program for mandatory reporters about the requirement to report under this act.

(c) Protective services plans.--

(1) Each area agency on aging shall include a protective services plan as part of its annual plan. The plan shall describe the local implementation of this [chapter] act,
including the organization, staffing, mode of operations and 
financing of protective services, as well as the provisions 
made for purchase of services, interagency relations, 
interagency agreements, service referral mechanisms and locus 
of responsibility for cases with multiservice agency needs. 

(2) The [description of] department shall establish the 
methods that will be used by the [agency] AAA, its designees 
and its service providers to assure the privacy of older 
adults receiving services and the confidentiality of all 
records [shall be established by the department]. The 
department shall establish a schedule for the submission and 
approval of the plans. 

(3) The [plan shall include] area agency on aging shall 
include in the plan, a list of all entities, whether public 
or private, that have been identified by the [area agency on 
aging] AAA as having substantial contact with potential 
victims or alleged perpetrators of abuse, neglect, 
exploitation and abandonment. [This list shall be submitted] 
The area agency on aging shall submit this list to the 
department for purposes of the public information campaign 
under subsection (a). 

Section 4. The act is amended by adding a section to read: 

Section 301.1. Duties of financial institutions. 

A financial institution that has an internal training program 
for its employees shall include information in their training 
curriculum to: 

(1) Assist employees in recognizing signs of potential 
financial abuse of an older adult, including, but not limited 
to, unusual activity in an older adult's deposit accounts, 
automated teller machine withdrawals by an older adult who 

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previously never used an automated teller machine or debit card and suspicious signatures on checks.

(2) Inform employees about the applicable provisions of this act and specifically the process that they should use if they choose to make an abuse report.

Section 5. Section 302 of the act, amended June 9, 1997 (P.L.160, No.13), is amended to read:

Section 302. Reporting; protection from retaliation; immunity.

(a) Voluntary reports.--Any person, including an employee of a financial institution, having reasonable cause to believe that an older adult may be in need of protective services may report such information to the area agency on aging. Where applicable, reports shall comply with the provisions of Chapter 7 area agency on aging.

(b) Receiving reports.--The agency shall be capable of receiving reports of older adults in need of protective services 24 hours a day, seven days a week (including holidays). This capability may include the use of a local emergency response system or a crisis intervention agency, provided that access can be made to a protective services caseworker in appropriate emergency situations as set forth in regulations promulgated by the department. All reports received orally under this section shall be reduced to writing immediately by the person who receives the report.

(c) Retaliatory action; penalty.--Any person making a report or cooperating with the agency, including providing testimony in any administrative or judicial proceeding, and the victim shall be free from any discriminatory, retaliatory or disciplinary
action by an employer or by any other person or entity. Any person who violates this subsection is subject to a civil lawsuit by the reporter or the victim wherein the reporter or victim shall recover treble compensatory damages, compensatory and punitive damages or $5,000, whichever is greater.

(c.1) Intimidation; penalty.--Any person, including the victim, with knowledge sufficient to justify making a report or cooperating with the agency, including possibly providing testimony in any administrative or judicial proceeding, shall be free from any intimidation by an employer or by any other person or entity. Any person who violates this subsection is subject to civil lawsuit by the person intimidated or the victim wherein the person intimidated or the victim shall recover treble compensatory damages, compensatory and punitive damages or $5,000, whichever is greater.

(d) Immunity.--Any person participating in the making of a report or who provides testimony in any administrative or judicial proceeding arising out of a report shall be immune from any civil or criminal liability on account of the report or testimony unless the person acted in bad faith or with malicious purpose. This immunity shall not extend to liability for acts of abuse, neglect, exploitation or abandonment, even if such acts are the subject of the report or testimony.]

(e) Mandatory reports.--

(1) A mandatory reporter, who has reasonable cause to suspect that an older adult may be a victim of abuse, neglect, exploitation or abandonment shall immediately make an oral report to the area agency on aging. If applicable, the AAA shall advise the mandatory reporter of additional reporting requirements that may pertain under paragraph (2).
Within 48 hours of making the oral report, the mandatory reporter shall make a written report to the AAA.

(2) A mandatory reporter who has reasonable cause to suspect that an older adult may be a victim of suspicious death, serious bodily injury, serious physical injury, sexual abuse or serious financial harm shall, in addition to any duty imposed under paragraph (1), immediately contact law enforcement officials and the department to make an oral report. Within 48 hours of making the oral report, the mandatory reporter shall make a written report to appropriate law enforcement officials and to the area agency on aging. The AAA shall forward the report to the department within 48 hours of receipt.

(3) A written mandatory report under this subsection shall be in a manner and on forms prescribed by the department. At a minimum, the report shall include the following information, as well as any additional information required by regulation:

(i) Name, age, sex and address of the older adult.

(ii) Name and address of the older adult's legal representative or next of kin.

(iii) Name and address of the facility, if applicable.

(iv) Nature and location of the reported incident and any specific comments or observations that are directly related to the alleged incident and the older adult involved.

(v) Any relevant information known related to the identity of the alleged perpetrator, including, but not limited to, name, age, sex, relationship to the older adult.
(vi) Name of the individual making the report, contact information for the reporter, and information regarding any actions taken by the reporter in response to the incident.

(4) The provisions of this section shall be satisfied when the mandatory or voluntary reporter submits a report to the Incident Reporting System. Nothing in this subsection shall be construed to prohibit a reporter who has reasonable cause to suspect that a recipient is a victim of abuse or neglect from also making a report to the area agency on aging.

(5) A mandatory reporter shall be trained on the requirements to report under this act.

(f) Coroner.—For a report under subsection (a) or (b) that concerns the death of an older adult, if there is reasonable cause to suspect that the older adult died as a result of abuse, neglect, exploitation or abandonment, the area agency on aging shall give the oral report and forward a copy of the written report to the appropriate coroner within 24 hours.

Section 6. Sections 303 and 304 of the act, amended December 18, 1996 (P.L.1125, No.169), and June 9, 1997 (P.L.160, No.13), are repealed:

[Section 303. Investigations of reports of need for protective services.

(a) Investigation.—It shall be the agency's responsibility to provide for an investigation of each report made under section 302. The investigation shall be initiated within 72 hours after the receipt of the report and shall be carried out under regulations issued by the department. These regulations
shall provide for the methods of conducting investigations under this section and shall assure that steps are taken to avoid any conflict of interest between the investigator and service delivery functions. Reports and investigations under this section shall comply with Chapter 7, where applicable.

(b) Investigation involving licensed facilities.--Any report concerning older adults residing in a State-licensed facility shall be investigated under procedures developed by the department in consultation with the State agency licensing such facility. If the report concerns a resident of a State-licensed facility for whom the area agency on aging provides ombudsman services, the ombudsman of the area agency on aging must be notified.

(c) Unsubstantiated reports.--If, after investigation by the agency, the report is unsubstantiated, the case shall be closed and all information identifying the reporter and the alleged abuser shall be immediately deleted from all records. For purposes of substantiating a pattern of abuse, neglect, exploitation or abandonment, the name of the alleged victim and any information describing the alleged act of abuse, neglect, exploitation or abandonment may be maintained for a period of six months under procedures established by the department.

(d) Substantiated reports.--If the report is substantiated by the agency, or if the client assessment is necessary in order to determine whether or not the report is substantiated, the agency shall provide for a timely client assessment if the older adult consents to an assessment. Upon completion of the assessment, written findings shall be prepared which shall include recommended action. This service plan shall provide for the least restrictive alternative, encouraging client self-
determination and continuity of care. The service plan shall be in writing and shall include a recommended course of action, which may include the pursuit of civil or criminal remedies. If an older adult found to be in need of protective services does not consent to a client assessment or the development of a service plan, the agency may apply to the case the provisions of section 307.

Section 304. Provision of services; access to records and persons.

(a) Availability of protective services.--The agency shall offer protective services under any of the following conditions:
   (1) An older adult requests such services.
   (2) Another interested person requests such services on behalf of an older adult.
   (3) If, after investigation of a report, the agency determines the older adult is in need of such services.

(b) Consent by request.--Except as provided in section 307, an individual shall receive protective services voluntarily. In no event may protective services be provided under this chapter to any person who does not consent to such services or who, having consented, withdraws such consent, unless such services are ordered by a court, requested by a guardian of the older adult or provided under section 307. Nothing in this chapter shall prevent the agency from petitioning for the appointment of a guardian pursuant to Title 20 of the Pennsylvania Consolidated Statutes (relating to decedents, estates and fiduciaries).

(c) Interference with services.--If any person interferes with the provision of services or interferes with the right of an older adult to consent to provision of services, the agency may petition the court for an order enjoining such interference.
(d) Access to records.--The agency shall have access to all records relevant to:

1. Investigations of reports under section 303.
2. Assessment of client need.
3. Service planning when an older adult's need for protective services has been or is being established.
4. The delivery of services arranged for under the service plan developed by the agency to respond to an older adult's assessed need for specific services.

(e) Access to persons.--The agency shall have access to older persons who have been reported to be in need of protective services in order to:

1. Investigate reports under section 303 and Chapter 7.
2. Assess client need and develop a service plan for addressing needs determined.
3. Provide for the delivery of services by the agency or other service provider arranged for under the service plan developed by the agency.

(f) Denial of access to persons.--If the agency is denied access to an older adult reported to be in need of protective services and access is necessary to complete the investigation or the client assessment and service plan, or the delivery of needed services in order to prevent further abuse, neglect, exploitation or abandonment of the older adult reported to be in need of protective services, the agency may petition the court for an order to require the appropriate access when either of the following conditions apply:

1. The caretaker or a third party has interfered with the completion of the investigation or the client assessment and service plan or the delivery of services.
(2) The agency can demonstrate that the older adult reported to be in need of protective services is denying access because of coercion, extortion or justifiable fear of future abuse, neglect, or exploitation or abandonment.

(g) Access by consent.--The agency's access to confidential records held by other agencies or individuals and the agency's access to an older adult reported to be in need of protective services shall require the consent of the older adult or a court-appointed guardian except as provided for under this section or section 307.

(h) Denial of access to records.--If the agency is denied access to records necessary for the completion of a proper investigation of a report or a client assessment and service plan, or the delivery of needed services in order to prevent further abuse, neglect, exploitation or abandonment of the older adult reported to be in need of protective services, the agency may petition the court of common pleas for an order requiring the appropriate access when either of the following conditions apply:

(1) The older adult has provided written consent for any confidential records to be disclosed and the keeper of the records denies access.

(2) The agency can demonstrate that the older adult is denying access to records because of incompetence, coercion, extortion or justifiable fear of future abuse, neglect, exploitation or abandonment.

Section 7. The act is amended by adding sections to read:

Section 304.1. Receipt and investigation of reports.

(a) Receipt.--The area agency on aging shall be capable of receiving reports of older adults in need of protective services.
24 hours a day, seven days a week. This capability may include
the use of a local emergency response system or a crisis
intervention agency provided that access can be made to a
protective services caseworker in appropriate emergency
situations, as set forth in regulations issued by the
department. All reports received orally shall be documented
immediately in a manner set forth by the department.

(b) Investigation.--

(1) The area agency on aging shall investigate each
report in accordance with regulations issued by the
department. The investigation shall be initiated within 72
hours after the receipt of the report and carried out under
regulations issued by the department. The regulations shall
provide for the methods of conducting investigations and
shall assure that steps are taken to avoid any conflict of
interest.

(2) Consent of the older adult is not required in order
to investigate reports of abuse, neglect, exploitation or
abandonment.

(c) Access to older adults.--

(1) The area agency on aging shall have direct access to
older adults who have been reported to be in need of
protective services in order to:

(i) Investigate reports.

(ii) Assess needs of the older adult and develop a
service plan for addressing those needs.

(iii) Provide for the delivery of services by the
AAA or other service provider arranged for under the
service plan.

(2) If the AAA is denied access to an older adult
reported to be in need of protective services, the AAA may petition the court for an order to require any of the following:

(i) Access to the older adult.
(ii) A medical evaluation of the older adult.
(iii) A psychiatric evaluation of the older adult.

(d) Access to records.--

(1) The area agency on aging shall have access to all records for the purposes of investigating reports.
(2) The AAA shall, subject to the consent of the older adult, have access to all records for the purposes of:
   (i) Assessing an older adult's need for services.
   (ii) Planning and delivery of services.
(3) Records of State agencies, private organizations, financial institutions, medical institutions and practitioners, which the AAA reasonably believes to be necessary to complete an investigation or assessment and service plan, shall be requested in written form and be made available to the AAA unless the disclosure would be prohibited by any other provision of Federal or State law.
(4) If the AAA can demonstrate that the older adult has denied access to the older adult's records because of incapacity, coercion, extortion or justifiable fear, the AAA shall have the power to access all records. If the older adult denying access to records is competent, the AAA may petition the court for an order to require access.
(5) If any other entity or individual denies access to the older adult's records, the AAA may petition the court for an order to require access.

(e) Investigations involving facilities.--
(1) If the report concerns a facility, the area agency on aging shall notify the local ombudsman and the licensing agency. Any investigations concerning facilities shall be conducted under procedures developed by the department in consultation with the State agency with oversight authority for such facility.

(2) The department and any other State agency shall share information with one another necessary to ensure the health, safety and welfare of the older adult.

(3) Facilities shall take reasonable steps to protect the older adults following receipt of a report of suspected abuse, neglect, abandonment or exploitation involving a facility employee, including a plan of supervision or suspension.

(f) Investigations involving law enforcement.--

(1) Law enforcement officials, the area agency on aging and mandatory reporters shall coordinate their respective investigations and shall advise each other and provide any applicable additional information on an ongoing basis.

(2) Upon receiving a report that falls into any of the following categories, the AAA shall immediately notify law enforcement:

   (i) Suspicious death.

   (ii) Serious bodily injury.

   (iii) Serious physical injury.

   (iv) Sexual abuse.

   (v) Serious financial harm.

(3) Following a referral to law enforcement:

   (i) The AAA shall contact law enforcement to obtain information about any actions taken and the outcomes,
including any decisions regarding criminal charges.

(ii) Law enforcement shall provide this information to the extent that it is available.

(iii) The AAA shall report this information to the department in a manner prescribed by the department.

(g) Unsubstantiated reports.--If, after investigation by the area agency on aging, the report is unsubstantiated, the case shall be closed. For purposes of substantiating a pattern of abuse, neglect, exploitation or abandonment, case records shall be maintained for three years.

(h) Substantiated reports.--

(1) If, after investigation by the area agency on aging, the report is substantiated, the AAA, in conjunction with the older adult, shall develop a service plan.

(2) The service plan shall encourage self-determination and continuity of care in the least restrictive setting.

(3) For purposes of substantiating a pattern of abuse, neglect, exploitation or abandonment, case records shall be maintained for three years.

(4) The AAA may pursue civil or criminal remedies.

(5) An older adult shall not be found to be abused or neglected solely on the grounds of environmental factors that are beyond the control of the older adult or the caretaker, such as inadequate housing, furnishings, income, clothing or medical care.

Section 304.2. Provision of protective services.

(a) Availability of protective services.--The area agency on aging shall offer protective services under any of the following conditions:

(1) An older adult requests protective services.
(2) Another interested person requests protective services on behalf of an older adult.

(3) After investigation of a report, the AAA determines the older adult is in need of protective services.

(b) Consent by request.--An individual shall receive protective services voluntarily, unless protective services are ordered by a court of competent jurisdiction or requested by the older adult's legal representative.

(c) Interference with protective services.--If any person interferes with the provision of protective services or interferes with the right of an older adult to consent to provision of protective services, the area agency on aging may petition the court for an order enjoining such interference.

(d) Financial obligations; liabilities and payments.--All older adults receiving services and all agencies providing services under this act shall comply with the following provisions regarding liability for the payment of services:

(1) Funding to provide or make available protective services under this act shall not be used in place of any public or private entitlements or benefits for which the older adult receiving protective services under this act is or may be eligible.

(2) Funding available to local protective services agencies under this act may be used to cover the costs of activities, including, but not limited to:

(i) Administering protective services plans.

(ii) Receiving and maintaining records of reports of abuse, neglect, exploitation and abandonment.

(iii) Conducting investigations of reported abuse, neglect, exploitation and abandonment.
(iv) Carrying out assessments and developing service plans.

(v) Petitioning the court.

(vi) Providing for emergency involuntary intervention.

(vii) Arranging for available services needed to carry out service plans, which may include arranging for services for other persons in order to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an older adult.

(viii) Purchasing, on a temporary basis, protective services determined by a service plan to be necessary to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an older adult when such protective services are not available within the existing resources of the AAA or other appropriate provider. Purchase of protective services under this subparagraph shall be limited to a 30-day period, which period may be renewed with adequate justification under regulations issued by the department.

(3) Older adults receiving protective services shall not be required to pay a fee for any protective services received by other older adults when the receipt of such protective services by others is not subject to cost sharing.

Section 8. Sections 305 and 306 of the act, amended December 18, 1996 (P.L.1125, No.169), are repealed:

[Section 305. Immunity from civil and criminal liability.

In the absence of willful misconduct or gross negligence, the agency, the director, employees of the agency, protective services workers or employees of the department shall not be
civilly or criminally liable for any decision or action or
resulting consequence of decisions or action when acting under
and according to the provisions of this chapter.

Section 306. Confidentiality of records.

(a) General rule.--Information contained in reports, records
of investigation, client assessment and service plans shall be
considered confidential and shall be maintained under
regulations promulgated by the department to safeguard
confidentiality. Except as provided below, this information
shall not be disclosed to anyone outside the agency other than
to a court of competent jurisdiction or pursuant to a court
order.

(b) Limited access to the agency's protective services
records.--

(1) In the event that an investigation by the agency
results in a report of criminal conduct, law enforcement
officials shall have access to all relevant records
maintained by the agency or the department.

(2) In arranging specific services to carry out service
plans, the agency may disclose to appropriate service
providers such information as may be necessary to initiate
the delivery of services.

(3) A subject of a report made under section 302 may
receive, upon written request, all information contained in
the report except that prohibited from being disclosed by
paragraph (4).

(4) The release of information that would identify the
person who made a report of suspected abuse, neglect,
exploitation or abandonment or person who cooperated in a
subsequent investigation, is hereby prohibited unless the
secretary can determine that such a release will not be
detrimental to the safety of such person.

(5) When the department is involved in the hearing of an
appeal by a subject of a report made under section 302, the
appropriate department staff shall have access to all
information in the report record relevant to the appeal.

(6) For the purposes of monitoring agency performance,
appropriate staff of the department may access agency
protective services records.

Section 9. Section 307 of the act, amended December 18, 1996
(P.L.1125, No.169), is amended to read:

Section 307. Involuntary intervention by emergency court order.

(a) Emergency petition.--[Where there was clear and
convincing evidence that if protective services are not
provided, the person to be protected is at imminent risk of
death or serious physical harm, the agency may petition the
court for an emergency order to provide the necessary services.
The courts of common pleas of each judicial district shall
ensure that a judge or district justice is available on a 24-
hour-a-day, 365-day-a-year basis to accept and decide on
petitions for an emergency court order under this section
whenever the agency determines that a delay until normal court
hours would significantly increase the danger the older adult
faces.]

(1) An area agency on aging may petition a court of
common pleas for an emergency order to provide protective
services to an older adult who is at imminent risk of death,
sexual abuse, serious bodily injury, serious physical injury
or serious financial harm.

(2) The court of common pleas shall grant the AAA's
petition if it finds, by a preponderance of the evidence, that failure to provide protective services will place the older adult at imminent risk of death, sexual abuse, serious bodily injury, serious physical injury or serious financial harm.

(3) The courts of common pleas of each judicial district shall ensure that a judge or magisterial district judge is available on a 24-hour-a-day, 365-days-a-year basis to accept and rule on petitions for emergency court orders under this section whenever the AAA determines that a delay until normal court hours may significantly increase danger to the older adult.

(b) Limited order.--The court, after finding a preponderance of evidence of the need for an emergency order, shall order only such protective services as are necessary to remove the conditions creating the established need.

(c) Right to counsel.--In order to protect the rights of an older adult for whom protective services are being ordered, an emergency court order under this section shall provide that the older adult has the right to legal counsel. If the older adult is unable to provide for counsel, such counsel shall be appointed by the court.

(d) Forcible entry.--Where it is necessary to forcibly enter premises after obtaining a court order, a [peace officer] law enforcement official may do so, accompanied by a representative of the [agency] area agency on aging.

(e) Health and safety requirements.--The [agency] area agency on aging shall take reasonable steps to [assure] ensure that while the [person is receiving] older adult receives...
protective services under an emergency court order, the health
and safety needs of any of the [person's] older adult's
dependents are met and that personal property and the dwelling
the [person] older adult occupies are secure.

[(f) Exclusion of remedy.--Nothing in this chapter shall be
interpreted to deny any older adult access to the emergency
medical services or police protection that would be provided to
anyone, regardless of age, in similar circumstances.]

Section 10. Sections 308, 309, 310 and 311 of the act,
amended December 18, 1996 (P.L.1125, No.169), are repealed:
[Section 308. Individual rights.
(a) Rights of protective services clients.--The agency shall
observe the following minimum requirements to safeguard the
rights of an older adult who is reported to be in need of
protective services:

(1) The agency shall discreetly notify the older person
during the investigation that a report has been made and
shall provide the person with a brief summary of the nature
of the report.

(2) As provided under section 306(b)(3), the older adult
may request, and the agency shall provide, additional
information contained in the report.

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

(4) Nothing in this act shall limit the right of any
older person to file a petition pursuant to the act of
October 7, 1976 (P.L.1090, No.218), known as the Protection From Abuse Act.

(b) Rights of alleged abusers.--An individual who is alleged in a protective services report to be a perpetrator of the abuse, neglect, exploitation or abandonment of an older adult shall be entitled to the following if the report is substantiated by the agency:

(1) Such an individual shall be notified by the agency at the conclusion of the investigation of the report that allegations have been made and shall be given a brief summary of the allegations.

(2) As provided under section 306(b)(3), the alleged perpetrator may request, and the agency shall provide, additional information contained in the report.

(3) An alleged perpetrator is entitled to file an appeal with the department under 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) to challenge the agency's finding resulting from the investigation of a report made under section 303.

Section 309. Financial obligations; liabilities and payments.

All individuals receiving services and all agencies providing services under this chapter shall comply with the following provisions regarding liability for the payment of services:

(1) Funding to provide or make available protective services under this chapter shall not supplant any public and private entitlements or resources for which persons receiving protective services under this chapter are or may be eligible, and shall not be available until such persons have exhausted their eligibility and receipt of benefits under said public and private entitlements or resources.
(2) Funding available to local protective services agencies under this chapter may be used to cover the costs of activities including, but not limited to, the following:

(i) Administering protective services plans required under section 301(c).

(ii) Receiving and maintaining records of reports of abuse under section 302.

(iii) Conducting investigations of reported abuse under section 303.

(iv) Carrying out client assessments and developing service plans under section 303.

(v) Petitioning the court under sections 304 and 307.

(vi) Providing emergency involuntary intervention under section 307.

(vii) Arranging for available services needed to carry out service plans, which may include, as appropriate, arranging for services for other household members in order to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an older adult.

(viii) Purchasing, on a temporary basis, services determined by a service plan to be necessary to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an older adult when such services are not available within the existing resources of the agency or other appropriate provider. Purchase of services under this provision is limited to a 30-day period which may be renewed with adequate justification under regulations promulgated by the department.

(3) The obligation of the Commonwealth and the counties
to provide funds to the department or any agency for services provided pursuant to this chapter shall be entirely discharged by the appropriations made to the department or an agency. Provided that the agency has met its responsibility under the law, no action at law or equity shall be instituted in any court to require the department, any agency, county or the Commonwealth to provide benefits or services under this chapter for which appropriations from the Commonwealth or counties are not available.

(4) Protective services clients receiving the same services provided to others under an agency service plan shall not be required to pay a fee for any services not subject to cost sharing for other older adults.

Section 310. Regulations; enforcement.

(a) Promulgation of regulations.--The department shall promulgate the rules and regulations to carry out this chapter and shall be responsible for presenting to the General Assembly annually a report on the program and services performed.

(b) Enforcement.--This chapter shall be enforced only after promulgation of regulations by the department, which shall occur no later than 12 months following passage of this chapter, except that section 301 shall apply when the area agency on aging certifies to the department that it is prepared to fulfill its responsibilities. The certification shall be made within 90 days following promulgation of regulations.

Section 311. Funds for payment of administration of chapter.

Funds necessary to administer this chapter shall be provided by annual appropriation by the General Assembly.]

Section 312. Confidentiality of records.
(a) General rule.--Information contained in reports, records of investigation, assessments and service plans created under this act shall be considered confidential and shall be maintained under regulations issued by the department. Except as provided below, this information shall only be disclosed by area agency on aging staff for the purpose of development and implementation of protective services. Neither the department nor the AAA may release information that could be detrimental to an older adult, except that such information shall be released to law enforcement under subsection (b)(2). All information contained in protective services records is subject to other Federal and State confidentiality and security laws.

(b) Access.--

(1) Protective services records may be provided to:

   (i) A court of competent jurisdiction or another party pursuant to a court order. A subpoena, other than a grand jury subpoena, shall not be deemed a court order for purposes of this section.

   (ii) Law enforcement officials or the coroner, if the information is relevant to their investigation of abuse, neglect, exploitation or abandonment of the older adult.

   (iii) A practitioner of the healing arts who is examining or treating the older adult and who suspects that the older adult is in need of protection under this act.

   (iv) The director or an individual specifically designated in writing by the director of any hospital or other medical institution where the older adult is being treated, if the director or designee suspects that the
recipient is in need of protection under this act.

(2) In arranging specific services to carry out service plans, the area agency on aging may disclose to appropriate service providers such information as may be necessary to initiate delivery of services.

(3) The older adult who is the subject of a report or his guardian may receive, upon written request, all information contained in the report of need except information that would identify the person who made a report of suspected abuse, neglect, exploitation or abandonment or persons who cooperated in a subsequent investigation.

(4) A person who makes a report of suspected abuse, neglect, exploitation or abandonment may receive, upon written request, confirmation that the report was received and the AAA is acting in accordance with this act.

(5) For the purposes of monitoring agency performance or conducting other official duties, appropriate staff of the department, as designated by the secretary, may access AAA protective services records.

(6) The department or the AAA may collaborate or share information included in protective services records with State agencies for purposes of official Commonwealth business.

(7) The department or the AAA may share protective services records with another AAA that is performing duties under this act that are relevant to older adults within their jurisdictions.

(8) An employee of an agency of another state who performs older adult protective services similar to those under this act may access protective services records.
relevant to older adults within their jurisdiction.

(c) Protecting identify of reporter and cooperating

witnesses.--

(1) Except for disclosures to law enforcement officials,

the release of records that would identify the individual who
made a report under this act or an individual who cooperated
in a subsequent investigation is prohibited.

(2) Where records are provided pursuant to court order,

the identity of the reporter and cooperating witnesses shall
be redacted, unless otherwise ordered by the court after an
in camera review.

Section 313. Rights of older adults.

(a) General rule.--An area agency on aging shall discreetly
notify the older adult during the investigation that a report
has been made and shall provide the older adult a brief summary
of the nature of the report.

(b) Release of information.--As provided in section
312(b)(3), an older adult who is the subject of a report, or his
guardian, may receive, upon written request, all information
contained in the report of need except information that would
identify the person who made a report of suspected abuse,
neglect, exploitation or abandonment or persons who cooperated
in a subsequent investigation.

(c) Appeal.--Any denial of protective services by the
department or an authorized area agency on aging under this act
may be appealed according to the provisions of the rules and
regulations issued by the department under Article XXII-A of the
act of April 9, 1929 (P.L.177, No.175), known as The
Administrative Code of 1929.

Section 12. Section 501 of the act, added December 18, 1996
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(P.L.1125, No.169), is repealed:

Section 501. Definitions.

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

"Applicant." An individual who submits an application, which is being considered for employment, to a facility.


Section 13. Section 502 of the act, amended October 24, 2012 (P.L.1412, No.175), is repealed:

Section 502. Information relating to prospective facility personnel.

(a) General rule.—A facility shall require all applicants to submit with their applications, and shall require all administrators and any operators who have or may have direct contact with a recipient to submit, the following information obtained within the preceding one-year period:

(1) Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal history record information), a report of criminal history record information from the State Police or a statement from the State Police that their central repository contains no such information relating to that person. The criminal history record information shall be limited to that which is disseminated pursuant to 18 Pa.C.S. § 9121(b)(2) (relating to general regulations).

(2) Where the applicant is not and for the two years immediately preceding the date of application has not been a resident of this Commonwealth, administration shall require the applicant to submit with the application for employment a report of Federal criminal history record information
pursuant to the Federal Bureau of Investigation's appropriation under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544, 86 Stat. 1109). The department shall be the intermediary for the purposes of this paragraph. For the purposes of this paragraph, the applicant shall submit a full set of fingerprints in a manner prescribed by the department. The Commonwealth shall submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The information obtained from the criminal record check shall be used by the department to determine the applicant's eligibility. The determination shall be submitted to the administrator by the applicant prior to commencing employment. The administrator shall insure confidentiality of the information. The provisions of 18 Pa.C.S. § 9121(b)(2) shall not apply if the request for a report of Federal criminal history record information is made pursuant to this section.

(b) (Reserved).]

Section 14. Section 503 of the act, amended June 9, 1997 (P.L.160, No.13), is repealed:

[Section 503. Grounds for denying employment.

(a) General rule.--In no case shall a facility hire an applicant or retain an employee required to submit information pursuant to section 502(a) if the applicant's or employee's criminal history record information indicates the applicant or employee has been convicted of any of the following offenses:

(1) An offense designated as a felony under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.
An offense under one or more of the following provisions of 18 Pa.C.S. (relating to crimes and offenses):

Chapter 25 (relating to criminal homicide).
Section 2702 (relating to aggravated assault).
Section 2901 (relating to kidnapping).
Section 2902 (relating to unlawful restraint).
Section 3121 (relating to rape).
Section 3122.1 (relating to statutory sexual assault).
Section 3123 (relating to involuntary deviate sexual intercourse).
Section 3124.1 (relating to sexual assault).
Section 3125 (relating to aggravated indecent assault).
Section 3126 (relating to indecent assault).
Section 3127 (relating to indecent exposure).
Section 3301 (relating to arson and related offenses).
Section 3502 (relating to burglary).
Section 3701 (relating to robbery).
A felony offense under Chapter 39 (relating to theft and related offenses) or two or more misdemeanors under Chapter 39.
Section 4101 (relating to forgery).
Section 4114 (relating to securing execution of documents by deception).
Section 4302 (relating to incest).
Section 4303 (relating to concealing death of child).
Section 4304 (relating to endangering welfare of children).
Section 4305 (relating to dealing in infant children).

Section 4952 (relating to intimidation of witnesses or victims).

Section 4953 (relating to retaliation against witness or victim).

A felony offense under section 5902(b) (relating to prostitution and related offenses).

Section 5903(c) or (d) (relating to obscene and other sexual materials and performances).

Section 6301 (relating to corruption of minors).

Section 6312 (relating to sexual abuse of children).

(3) A Federal or out-of-State offense similar in nature to those crimes listed in paragraphs (1) and (2).

(c) Immunity.--An administrator or a facility shall not be held civilly liable for any action directly related to good faith compliance with this section.

Section 15. The act is amended by adding a section to read:

Section 503.1. Criminal history.

(a) General rule.--Prior to hiring or engaging an applicant, a facility shall require the applicant to submit to the facility the following information obtained within the preceding one-year period:

(1) Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal history record information), a report of criminal history record information from the Pennsylvania State Police or a statement from the Pennsylvania State Police that their central repository contains no such information relating to the applicant. The provisions of 18 Pa.C.S. § 9121(b)(2) (relating to general regulations) shall not apply to criminal
history information or other criminal history record
information requested or received under this section.

(2) Federal criminal history record information pursuant
to the Federal Bureau of Investigation's appropriation under
the Departments of State, Justice, and Commerce, the
Judiciary, and Related Agencies Appropriation Act, 1973
(Public Law 92-544, 86 Stat. 1109), subject to the following:

(i) The department shall be the intermediary for the
purposes of this paragraph. The applicant shall submit a
full set of fingerprints to the Federal Bureau of
Investigation in a manner designated by the department.
The provisions of 18 Pa.C.S. § 9121(b)(2) shall not apply
to criminal history information or other criminal history
record information requested or received under this
section.

(ii) Criminal history information shall be used by
the department to determine the applicant's eligibility
for employment with a facility. The employment
determination shall be provided to the facility and the
applicant prior to commencement of employment. The
facility shall ensure confidentiality of the information.

(3) The department may require the applicant to submit
additional information from a court or other authority within
the time frame designated by the department. Failure to
provide the requested information within the time frame
designated by the department may result in employment
ineligibility.

(b) Prohibited offenses.—The following offenses and Federal
or out-of-State offenses similar in nature shall be prohibited,

as follows:
(1) Lifetime ban. A facility may not hire or engage an applicant required to submit information pursuant to this act if the applicant's criminal history record information indicates the applicant has been convicted of an offense or attempt, solicitation or conspiracy to commit an offense under one of the following provisions of 18 Pa.C.S. (relating to crimes and offenses):

- Chapter 25 (relating to criminal homicide).
- Chapter 26 (relating to crimes against unborn child).
- Section 2702 (relating to aggravated assault).
- Section 2713 (relating to neglect of care-dependent person).
- Section 2715 (relating to threat to use weapons of mass destruction).
- Section 2716 (relating to weapons of mass destruction).
- Section 2717 (relating to terrorism).
- Section 2901 (relating to kidnapping).
- Section 3121 (relating to rape).
- Section 3122.1 (relating to statutory sexual assault).
- Section 3123 (relating to involuntary deviate sexual intercourse).
- Section 3124.1 (relating to sexual assault).
- Section 3125 (relating to aggravated indecent assault).
- Section 3126 (relating to indecent assault).
- Section 3212 (relating to infanticide).
- Section 4302 (relating to incest).
- Section 4303 (relating to concealing death of child).
Section 4304 (relating to endangering welfare of children).

Section 4305 (relating to dealing in infant children).

Section 5510 (relating to abuse of corpse).

Section 6312 (relating to sexual abuse of children).

(2) Ten-year ban. A facility shall not hire or engage an applicant required to submit criminal history information pursuant to this act for a period of ten years from the date of conviction, if the applicant's criminal history record information indicates that the applicant has been convicted of:

(i) Any of the following provisions of 18 Pa.C.S.:

Section 2705 (relating to recklessly endangering another person) two or more misdemeanors.

Section 2902 (relating to unlawful restraint).

Section 3127 (relating to indecent exposure).

Section 3301 (relating to arson and related offenses).

Section 3502 (relating to burglary).

Section 3701 (relating to robbery).

A felony offense under Chapter 39 (relating to theft and related offenses).

Two or more misdemeanors under Chapter 39.

Section 4101 (relating to forgery).

Section 4106 (relating to access device fraud).

Section 4114 (relating to securing execution of documents by deception).

Section 4120 (relating to identity theft).

Section 4952 (relating to intimidation of witnesses).
or victims).

Section 4953 (relating to retaliation against witness, victim or party).

A felony offense under section 5902(b) (relating to prostitution and related offenses).

Section 5903(c) or (d) (relating to obscene and other sexual materials and performances).

Section 6301 (relating to corruption of minors).

(ii) Any of the following provisions of 75 Pa.C.S. (relating to vehicles):

Section 3735 (relating to homicide by vehicle while driving under influence).

Section 3735.1 (relating to aggravated assault by vehicle while driving under the influence).

Section 3742 (relating to accidents involving death or personal injury).

Section 3802 (relating to driving under influence of alcohol or controlled substance) graded as a misdemeanor of the second degree or higher.

(iii) An offense designated as a felony under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(3) A facility may hire an applicant subject to a 10-year ban under paragraph (2) prior to the expiration of the ban period, provided the applicant demonstrates a minimum five-year aggregate work history in care-dependent services, without disciplinary action or criminal conviction, from the date of conviction. Care-dependent services include health care, child care, mental health care, care of older adults or of persons with intellectual disabilities or physical
disabilities.

(c) Right to appeal.—An applicant or employee may challenge
the decision of the department involving the Federal criminal
history record by filing an appeal with the department in
accordance with 2 Pa.C.S. Ch. 5 Subch. A (relating to practice
and procedure of Commonwealth agencies).

(d) Employee disclosure.—

(1) The department shall develop a standardized form to
be used by facilities for the written reporting by employees
and administrators of any conviction for an offense
enumerated under subsection (b). The form shall be published
on the department's publicly accessible Internet website and
in the Pennsylvania Bulletin.

(2) Facilities required to use the form under paragraph
(1) shall comply with the following:

(i) The form shall contain a list of the prohibited
offenses under subsection (b) and a space for the
employee to indicate any convictions. Employees and
administrators who have not been convicted of any
enumerated offense shall respond "no conviction."

(ii) Employees and administrators shall be informed
that failure to accurately report any conviction for an
offense enumerated under subsection (b) shall subject the
employee to criminal prosecution under 18 Pa.C.S. § 4904
(relating to unsworn falsification to authorities).

(3) Facilities shall require employees and
administrators to complete and submit the form on an annual
basis. Employees and administrators shall advise their
employers with written notice utilizing the form not later
than 72 hours after a conviction.
(4) If an employee or administrator refuses to submit the form, the facility shall immediately require the employee to submit a current report of criminal history record information as required under subsection (a).

(e) Penalties.--

(1) An employee or administrator who discloses a conviction for an offense enumerated under subsection (b) shall be subject to termination.

(2) An employee or administrator who willfully fails to disclose a conviction for an offense enumerated under subsection (b) shall be subject to termination and may be subject to criminal prosecution under 18 Pa.C.S. § 4904.

(f) Provisional employees for limited periods.--

(1) Facilities may employ applicants on a provisional basis for a single period not to exceed 30 days, if all of the following conditions are met:

   (i) The applicant has applied for a criminal history report required under subsection (a)(1) and (2) and provided the facility with a copy of the completed request forms.

   (ii) The facility has no knowledge about the applicant that would disqualify the applicant from employment under 18 Pa.C.S. § 4911 (relating to tampering with public records or information).

   (iii) The applicant swears or affirms in writing that the applicant is not disqualified from employment under this act.

(2) If the information obtained from the criminal history report reveals that the applicant is disqualified from employment, the applicant shall be dismissed.
The department shall develop guidelines regarding the supervision of applicants. Supervision shall include random direct supervision by an employee who has been employed by the facility for a period of at least one year.

Section 16. Sections 504, 505, 506 and 507 of the act, added December 18, 1996 (P.L.1125, No.169), are repealed:

Section 504. Regulations.
The department, in consultation with the Department of Health and the Department of Public Welfare, shall promulgate the regulations necessary to carry out this chapter.

Section 505. Violations.
(a) Administrative.--
(1) An administrator who intentionally or willfully fails to comply or obstructs compliance with the provisions of this chapter commits a violation of this chapter and shall be subject to an administrative penalty under paragraph (3).
(2) A facility owner that intentionally or willfully fails to comply with or obstructs compliance with this chapter commits a violation of this chapter and shall be subject to an administrative penalty under paragraph (3).
(3) The Commonwealth agency or Commonwealth agencies which license the facility have jurisdiction to determine violations of this chapter and may issue an order assessing a civil penalty of not more than $2,500. An order under this paragraph is subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

(b) Criminal.--
(1) An administrator who intentionally or willfully fails to comply or obstructs compliance with this chapter commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of $2,500 or to imprisonment for not more than one year, or both.

(2) A facility owner that intentionally or willfully fails to comply with or obstructs compliance with this chapter commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of $2,500 or to imprisonment for not more than one year, or both.

Section 506. Provisional employees for limited periods.
Notwithstanding section 502, administrators may employ applicants on a provisional basis for a single period not to exceed 30 days or, for applicants under section 502(a)(2), a period of 90 days, if all of the following conditions are met:

(1) The applicant has applied for the information required under section 502 and the applicant provides a copy of the appropriate completed request forms to the administrator.

(2) The administrator has no knowledge of information pertaining to the applicant which would disqualify him from employment pursuant to section 503, subject to 18 Pa.C.S. § 4911 (relating to tampering with public records or information).

(3) The applicant swears or affirms in writing that he is not disqualified from employment under section 503.

(4) If the information obtained under section 502 reveals that the applicant is disqualified from employment under section 503, the applicant shall be immediately dismissed by the administrator.
The department shall develop guidelines regarding the supervision of applicants. For a home health care agency, supervision shall include random direct supervision by an employee who has been employed by the facility for a period of one year.

Section 507. State Police.

No later than one year following the effective date of this chapter, the State Police and the department shall report to the Aging and Youth Committee of the Senate and the Aging and Youth Committee of the House of Representatives with their findings and recommendations regarding the implementation of this chapter.

Section 17. Sections 508, 702, 703, 704, 705 and 706 of the act, amended or added June 9, 1997 (P.L.160, No.13), are repealed:

[Section 508. Applicability.

This chapter shall apply as follows:

(1) An individual who, on the effective date of this chapter, has continuously for a period of one year been an employee of the same facility shall be exempt from section 502 as a condition of continued employment.

(2) If an employee is not exempt under paragraph (1), the employee and the facility shall comply with section 502 within one year of the effective date of this chapter.

(3) If an employee who is exempt under paragraph (1) seeks employment with a different facility, the employee and the facility shall comply with section 502.

(4) An employee who has obtained the information required under section 502 may transfer to another facility established and supervised by the same owner and is not
required to obtain additional reports before making the
transfer.

Section 702. Reports to department and coroner.

(a) Department.--

(1) Within 48 hours of receipt of a written report under
section 701(a) involving sexual abuse, serious physical
injury, serious bodily injury or suspicious death, the agency
shall transmit a written report to the department.

Supplemental reports shall be transmitted as they are
obtained by the agency.

(2) A report under this subsection shall be made in a
manner and on forms prescribed by the department. The report
shall include, at a minimum, the following information:

(i) The name and address of the alleged victim.

(ii) Where the suspected abuse occurred.

(iii) The age and sex of the alleged perpetrator and
victim.

(iv) The nature and extent of the suspected abuse,
including any evidence of prior abuse.

(v) The name and relationship of the individual
responsible for causing the alleged abuse to the victim,
if known, and any evidence of prior abuse by that
individual.

(vi) The source of the report.

(vii) The individual making the report and where
that individual can be reached.

(viii) The actions taken by the reporting source,
including taking of photographs and x-rays, removal of
recipient and notification under subsection (b).

(ix) Any other information which the department may
require by regulation.

(b) Coroner.--For a report under section 701(a) which concerns the death of a recipient, if there is reasonable cause to suspect that the recipient died as a result of abuse, the agency shall give the oral report and forward a copy of the written report to the appropriate coroner within 24 hours.

Section 703. Investigation.

(a) Law enforcement officials.--Upon receipt of a report under section 701(b), law enforcement officials shall conduct an investigation to determine what criminal charges, if any, will be filed.

(b) Notification.--If law enforcement officials have reasonable cause to suspect that a recipient has suffered sexual abuse, serious physical injury, serious bodily injury or a suspicious death, law enforcement officials shall notify the agency.

(c) Cooperation.--To the fullest extent possible, law enforcement officials, the facility and the agency shall coordinate their respective investigations. Law enforcement officials, the facility and the agency shall advise each other and provide any applicable additional information on an ongoing basis.

(d) Further notification.--Law enforcement officials shall notify the agency and the facility of a decision regarding criminal charges. The agency and the department shall keep a record of any decision regarding criminal charges.

(e) Compliance with Chapter 3.--In addition to the provisions of this section, the agency shall comply with Chapter 3.

Section 704. Restrictions on employees.
(a) Plan of supervision.—Upon notification that an employee is alleged to have committed abuse, the facility shall immediately implement a plan of supervision or, where appropriate, suspension of the employee, subject to approval by the agency and by the Commonwealth agency with regulatory authority over the facility. A plan of supervision for a home health care agency must include periodic random direct inspections of care-dependent individuals by a facility employee who has been continuously employed by that facility for a period of at least one year.

(b) Prohibition.—Upon the filing of criminal charges against an employee, the Commonwealth agency which licenses the facility shall order the facility to immediately prohibit that employee from having access to recipients at the facility. If that employee is a director, operator, administrator or supervisor, that employee shall be subject to restrictions deemed appropriate by the Commonwealth agency which licenses the facility to assure the safety of recipients of the facility.

Section 705. Confidentiality of and access to confidential reports.

(a) General rule.—Except as provided in subsection (b), a report under this chapter shall be confidential.

(b) Exceptions.—A report under this chapter shall be made available to all of the following:

(1) An employee of the department or of an agency in the course of official duties in connection with responsibilities under this chapter.

(2) An employee of the Department of Health or the Department of Public Welfare in the course of official duties.
(3) An employee of an agency of another state which performs protective services similar to those under this chapter.

(4) A practitioner of the healing arts who is examining or treating a recipient and who suspects that the recipient is in need of protection under this chapter.

(5) The director, or an individual specifically designated in writing by the director, of any hospital or other medical institution where a victim is being treated if the director or designee suspects that the recipient is in need of protection under this chapter.

(6) A guardian of the recipient.

(7) A court of competent jurisdiction pursuant to a court order.

(8) The Attorney General.

(9) Law enforcement officials of any jurisdiction as long as the information is relevant in the course of investigating cases of abuse.

(10) A mandated reporter under Chapter 3 who made a report of suspected abuse. Information released under this paragraph shall be limited to the following:

(i) The final status of the report following the investigation.

(ii) Services provided or to be provided by the agency.

(c) Excision of certain names.--The name of the person suspected of committing the abuse shall be excised from a report made available under subsection (b)(4), (5) and (10).

(d) Release of information to alleged perpetrator and victim.--Upon written request, an alleged perpetrator and victim
may receive a copy of all information except that prohibited
from being disclosed by subsection (e).

(e) Protecting identity of person making report.--Except for
reports to law enforcement officials, the release of data that
would identify the individual who made a report under this
chapter or an individual who cooperated in a subsequent
investigation is prohibited. Law enforcement officials shall
treat all reporting sources as confidential information.

Section 706. Penalties.

(a) Administrative.--

(1) An administrator who intentionally or willfully
fails to comply or obstructs compliance with the provisions
of this chapter or who intimidates or commits a retaliatory
act against an employee who complies in good faith with the
provisions of this chapter commits a violation of this
chapter and shall be subject to an administrative penalty
under paragraph (3).

(2) A facility owner that intentionally or willfully
fails to comply with or obstructs compliance with this
chapter or that intimidates or commits a retaliatory act
against an employee who complies in good faith with this
chapter commits a violation of this chapter and shall be
subject to an administrative penalty under paragraph (3).

(3) The Commonwealth agency or Commonwealth agencies
which regulate the facility have jurisdiction to determine
violations of this chapter and may issue an order assessing a
civil penalty of not more than $2,500. An order under this
paragraph is subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to
practice and procedure of Commonwealth agencies) and Ch. 7
Subch. A (relating to judicial review of Commonwealth agency
(b) Criminal.--

(1) An administrator who intentionally or willfully fails to comply or obstructs compliance with this chapter commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of $2,500 or to imprisonment for not more than one year, or both.

(2) A facility owner that intentionally or willfully fails to comply with or obstructs compliance with this chapter commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of $2,500 or to imprisonment for not more than one year, or both.

(c) Penalties for failure to report.--A person required under this chapter to report a case of suspected abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.]

Section 18. The act is amended by adding a section to read:

Section 706.1. Penalties.

(a) Civil penalties.--

(1) A mandatory reporter who fails to comply or obstructs compliance with the provisions of this act or who intimidates or commits a retaliatory act against an individual who complies in good faith with the provisions of this act commits a violation of this act and shall be subject to an administrative penalty. The department shall determine violations of this act and may issue an order assessing a civil penalty of not more than $5,000. An order under this paragraph is subject to 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7.
Subch. A (relating to judicial review of Commonwealth agency action).

(2) The Commonwealth agency or agencies which license a facility shall determine violations of section 503.1 (relating to criminal history) and may issue an order assessing a civil penalty of not more than $5,000.

(b) Damages for retaliatory action.--

(1) The older adult or any person making a report or cooperating with an area agency on aging, including providing testimony in any administrative or judicial proceeding, shall be free from any discriminatory, retaliatory or disciplinary action by an employer or by any other person or entity.

(2) Any person who violates this subsection is subject to a civil lawsuit by the reporter or the older adult wherein the reporter or older adult shall recover treble compensatory damages, compensatory and punitive damages or $5,000, whichever is greater.

(c) Damages for intimidation.--

(1) Any person, including an older adult, with knowledge sufficient to justify making a report or cooperating with an area agency on aging, including possibly providing testimony in any administrative or judicial proceeding, shall be free from any intimidation by an employer or by any other person or entity.

(2) Any person who violates this subsection is subject to a civil lawsuit by the person intimidated or the older adult wherein the person intimidated or the older adult shall recover treble compensatory damages, compensatory and punitive damages or $5,000, whichever is greater.

(d) Criminal penalties.--
(1) A mandatory reporter under this act who intentionally fails to report suspected abuse, neglect, exploitation or abandonment commits a summary offense for the first violation and a misdemeanor of the second degree for a second or subsequent violation and shall, upon conviction, be sentenced to pay a fine of $5,000, or imprisonment for not more than one year, or both.

(2) It shall be unlawful for a person to knowingly or intentionally make or cause to be made a false statement or representation of a material fact in a report of need, in accordance with 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities). A person who makes a false statement is guilty of a misdemeanor of the second degree for each violation with a maximum penalty of $10,000 and five years' imprisonment.

(e) Immunity.--

(1) Any person participating in the making of a report or who provides testimony in any administrative or judicial proceeding in any court of this Commonwealth, arising out of a report, shall be immune from any civil or criminal liability on account of the report or testimony related to good faith compliance with this act.

(2) This immunity shall not extend to liability for acts of abuse, neglect, exploitation or abandonment, even if such acts are the subject of the report or testimony.

(3) Any company, institution and all affiliated entities that employ a person required or permitted to make a report under this act shall not be held civilly liable for any action directly related to good faith compliance with this act.
(f) Funds.--Funds collected under this act by the department shall be dedicated for department programs to investigate and prevent the abuse, neglect, exploitation and abandonment of older adults.

Section 19. Section 707 of the act, added June 9, 1997 (P.L.160, No.13), is repealed:

[Section 707. Immunity.]

An administrator or a facility shall not be held civilly liable for any action directly related to good faith compliance with this chapter.]

Section 20. The act is amended by adding sections to read:

Section 707.1. Immunity from civil and criminal liability.

In the absence of willful misconduct or gross negligence, an area agency on aging, the director, employees of an area agency on aging, protective services workers or employees of the department shall not be civilly or criminally liable for any decision or action or resulting consequence of decisions or action when acting under and according to the provisions of this act.

Section 707.2. Funding.

Funds necessary to administer this act shall be provided by annual appropriation by the General Assembly.

Section 21. Section 708 of the act, added June 9, 1997 (P.L.160, No.13), is amended to read:

Section 708. Regulations[.] and annual report.

(a) General rule.--The Department of Aging, the Department of Health and the Department of [Public Welfare] Human Services shall promulgate the regulations necessary to carry out this [chapter.] act.

(b) Duty to report.--The department shall present to the
General Assembly annually a report on the program and services performed.

Section 22. This act shall take effect as follows:

   (1) The addition of section 301.1 of the act shall take effect in one year.

   (2) This section shall take effect immediately.

   (3) The remainder of this act shall take effect in 180 days.