

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 132 Session of
1997

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BUXTON, NAILOR, KREBS, MASLAND, GEORGE, FLICK, ARMSTRONG,
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JANUARY 29, 1997

AS REPORTED FROM COMMITTEE ON AGING AND YOUTH, HOUSE OF
REPRESENTATIVES, AS AMENDED, FEBRUARY 4, 1997

AN ACT

1 Amending the act of November 6, 1987 (P.L.381, No.79), entitled
2 "An act relating to the protection of the abused, neglected,
3 exploited or abandoned elderly; establishing a uniform
4 Statewide reporting and investigative system for suspected
5 abuse, neglect, exploitation or abandonment of the elderly;
6 providing protective services; providing for funding; making
7 repeals," adding certain definitions; further providing for
8 reporting, for investigations and for reporting suspected
9 abuse by employees.

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

12 Section 1. Section 103 of the act of November 6, 1987
13 (P.L.381, No.79), known as the Older Adults Protective Services
14 Act, ~~amended December 18, 1996 (P.L. No.169),~~ is amended by
15 adding definitions to read:

16 Section 103. Definitions.

17 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 * * *

4 ~~"Serious bodily injury." An injury which:~~ <—

5 ~~(1) causes a person severe pain;~~

6 ~~(2) creates a substantial risk of death; or~~

7 ~~(3) significantly impairs a person's physical~~
8 ~~functioning, either temporarily or permanently.~~

9 ~~"SERIOUS BODILY INJURY." INJURY WHICH CREATES A SUBSTANTIAL~~ <—
10 ~~RISK OF DEATH OR WHICH CAUSES SERIOUS PERMANENT DISFIGUREMENT OR~~
11 ~~PROTRACTED LOSS OR IMPAIRMENT OF THE FUNCTION OF A BODY MEMBER~~
12 ~~OR ORGAN.~~

13 * * *

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

18 ~~Section 2. Sections 302(a), 303(a) and 304(e) of the act,~~ <—
19 ~~amended December 18, 1996 (P.L. , No.169), are amended to~~
20 ~~read:~~

21 SECTION 2. SECTIONS 302(A), 303(A), 304(E) AND 503 OF THE <—
22 ACT, AMENDED OR ADDED DECEMBER 18, 1996 (P.L. , NO.169), ARE
23 AMENDED TO READ:

24 Section 302. Reporting; protection from retaliation; immunity.

25 (a) Reporting.--Any person having reasonable cause to
26 believe that an older adult is in need of protective services
27 may report such information to the agency which is the local
28 provider of protective services. Where applicable, reports shall
29 comply with the provisions of chapter 7.

30 * * *

1 Section 303. Investigations of reports of need for protective
2 services.

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

13 * * *

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

16 * * *

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

20 (1) Investigate reports under section 303 and chapter 7.

21 (2) Assess client need and develop a service plan for
22 addressing needs determined.

23 (3) Provide for the delivery of services by the agency
24 or other service provider arranged for under the service plan
25 developed by the agency.

26 * * *

27 SECTION 503. GROUNDS FOR DENYING EMPLOYMENT.

<—

28 (A) GENERAL RULE.--IN NO CASE SHALL A FACILITY HIRE AN
29 APPLICANT OR RETAIN AN EMPLOYEE REQUIRED TO SUBMIT INFORMATION
30 PURSUANT TO SECTION 502(A) IF THE APPLICANT'S OR EMPLOYEE'S

1 CRIMINAL HISTORY RECORD INFORMATION INDICATES THE APPLICANT OR
2 EMPLOYEE HAS BEEN CONVICTED UNDER ONE OR MORE PROVISIONS OF 18
3 PA.C.S. (RELATING TO CRIMES AND OFFENSES):

4 [SECTION 2502(A) OR (B) (RELATING TO MURDER).]

5 CHAPTER 25 (RELATING TO CRIMINAL HOMICIDE).

6 SECTION 3121 (RELATING TO RAPE).

7 SECTION 3122.1 (RELATING TO STATUTORY SEXUAL ASSAULT).

8 SECTION 3123 (RELATING TO INVOLUNTARY DEVIATE SEXUAL
9 INTERCOURSE).

10 SECTION 3124.1 (RELATING TO SEXUAL ASSAULT).

11 SECTION 3125 (RELATING TO AGGRAVATED INDECENT ASSAULT).

12 SECTION 3126 (RELATING TO INDECENT ASSAULT).

13 SECTION 4302 (RELATING TO INCEST).

14 SECTION 6312 (RELATING TO SEXUAL ABUSE OF CHILDREN).

15 (B) OTHER OFFENSES.--IN NO CASE MAY A FACILITY HIRE AN
16 APPLICANT OR RETAIN AN EMPLOYEE REQUIRED TO SUBMIT INFORMATION
17 PURSUANT TO SECTION 502(A) IF THE APPLICANT'S OR EMPLOYEE'S
18 CRIMINAL HISTORY RECORD INFORMATION INDICATES THE APPLICANT OR
19 EMPLOYEE HAS BEEN CONVICTED WITHIN TEN YEARS IMMEDIATELY
20 PRECEDING THE DATE OF THE REPORT OF ONE OR MORE OF THE FOLLOWING
21 OFFENSES:

22 (1) AN OFFENSE DESIGNATED AS A FELONY UNDER THE ACT OF
23 APRIL 14, 1972 (P.L.233, NO.64), KNOWN AS THE CONTROLLED
24 SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT.

25 (2) AN OFFENSE UNDER ONE OR MORE OF THE FOLLOWING
26 PROVISIONS OF 18 PA.C.S.:

27 [CHAPTER 25 (RELATING TO CRIMINAL HOMICIDE) EXCEPT
28 FOR SECTION 2502(A) AND (B).]

29 SECTION 2702 (RELATING TO AGGRAVATED ASSAULT).

30 SECTION 2901 (RELATING TO KIDNAPPING).

SECTION 2902 (RELATING TO UNLAWFUL RESTRAINT).

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 4304 (RELATING TO ENDANGERING WELFARE OF CHILDREN).

SECTION 4305 (RELATING TO DEALING IN INFANT CHILDREN).

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).

(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 3. The act is amended by adding a chapter to read:

CHAPTER 7

REPORTING SUSPECTED ABUSE BY EMPLOYEES

Section 701. Reporting by employees.

(a) Mandatory reporting to agency.--

1 (1) An employee or an administrator who has reasonable
2 cause to suspect that a recipient is a victim of abuse shall
3 immediately make an oral report to the agency. IF APPLICABLE, <—
4 THE AGENCY SHALL ADVISE THE EMPLOYEE OR ADMINISTRATOR OF
5 ADDITIONAL REPORTING REQUIREMENTS THAT MAY PERTAIN UNDER
6 SUBSECTION (B). An employee shall notify the administrator
7 immediately following the report to the agency.

8 (2) Within 48 hours of making the oral report, the
9 employee or administrator shall make a written report to the
10 agency. The agency shall notify the administrator that a
11 report of abuse has been made with the agency.

12 (3) The employee may request the administrator to make,
13 or to assist the employee to make, the oral and written
14 reports required by this subsection.

15 (b) Mandatory reports to law enforcement officials.--

16 (1) An employee or an administrator who has reasonable
17 cause to suspect that a recipient is the victim of sexual
18 abuse or serious bodily injury or that a death is suspicious
19 shall, IN ADDITION TO CONTACTING THE AGENCY, immediately <—
20 contact law enforcement officials to make an oral report. An
21 employee shall notify the administrator immediately following
22 the report to law enforcement officials.

23 (2) Within 48 hours of making the oral report, the
24 employee and an administrator shall make a written report to
25 appropriate law enforcement officials.

26 (3) The law enforcement officials shall notify the
27 administrator that a report has been made with the law
28 enforcement officials.

29 (4) The employee may request the administrator to make,
30 or to assist the employee to make, the oral and written

1 reports to law enforcement required by this subsection.

2 (c) Contents of report.--A written report under this section
3 shall be in a manner and on forms prescribed by the department.
4 The report shall include, at a minimum, the following
5 information:

- 6 (1) Name, age and address of the recipient.
- 7 (2) Name and address of the recipient's guardian or next
8 of kin.
- 9 (3) Name and address of the facility.
- 10 (4) Nature of the alleged offense.
- 11 (5) Any specific comments or observations that are
12 directly related to the alleged incident and the individual
13 involved.

14 Section 702. Reports to department and coroner.

15 (a) Department.--

16 (1) Within 48 hours of receipt of a written report under
17 section 701(a) INVOLVING SEXUAL ABUSE, SERIOUS BODILY INJURY <—
18 OR SUSPICIOUS DEATH, the agency shall transmit a written
19 report to the department. Supplemental reports shall be
20 transmitted as they are obtained by the agency.

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

- 24 (i) The name and address of the alleged victim.
- 25 (ii) Where the suspected abuse occurred.
- 26 (iii) The age and sex of the alleged perpetrator and
27 victim.
- 28 (iv) The nature and extent of the suspected abuse,
29 including any evidence of prior abuse.
- 30 (v) The name and relationship of the individual

1 responsible for causing the alleged abuse to the victim,
2 if known, and any evidence of prior abuse by that
3 individual.

4 (vi) The source of the report.

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

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

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

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

17 Section 703. Investigation.

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

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

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

1 basis.

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

6 (e) Compliance with Chapter 3.--In addition to the
7 provisions of this section, the agency shall comply with Chapter
8 3.

9 Section 704. Restrictions on employees.

10 (a) Plan of supervision.--Upon notification that an employee
11 is alleged to have committed abuse, the facility shall
12 immediately implement a plan of supervision or, where
13 appropriate, suspension of the employee, subject to approval by
14 the agency and by the Commonwealth agency with regulatory
15 authority over the facility. A plan of supervision for a home
16 health care agency must include periodic random direct
17 inspections of care-dependent individuals by a facility employee
18 who has been continuously employed by that facility for a period
19 of at least one year.

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

28 Section 705. Confidentiality of and access to confidential
29 reports.

30 (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:

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

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

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

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

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

18 Section 706. Penalties.

19 (a) Administrative.--

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

27 (2) A facility owner that intentionally or willfully
28 fails to comply with or obstructs compliance with this
29 chapter or that intimidates or commits a retaliatory act
30 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 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.

(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 4. This act shall take effect in ~~90~~ 180 days.

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