

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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ROBERTS, BAKER, HABAY, ORIE, BENNINGHOFF, EACHUS AND BROWN,
JANUARY 29, 1997

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
FEBRUARY 11, 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, is amended by adding definitions to read:

15 Section 103. Definitions.

16 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." Injury which creates a substantial
5 risk of death or which causes serious permanent disfigurement or
6 protracted loss or impairment of the function of a body member
7 or organ.

8 "SERIOUS PHYSICAL INJURY." AN INJURY THAT:

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9 (1) CAUSES A PERSON SEVERE PAIN; OR

10 (2) SIGNIFICANTLY IMPAIRS A PERSON'S PHYSICAL
11 FUNCTIONING, EITHER TEMPORARILY OR PERMANENTLY.

12 * * *

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

17 Section 2. Sections 302(a), 303(a), 304(e) and 503 of the
18 act, amended or added December 18, 1996 (P.L.1125, No.169), are
19 amended to read:

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

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

26 * * *

27 Section 303. Investigations of reports of need for protective
28 services.

29 (a) Investigation.--It shall be the agency's responsibility
30 to provide for an investigation of each report made under

1 section 302. The investigation shall be initiated within 72
2 hours after the receipt of the report and shall be carried out
3 under regulations issued by the department. These regulations
4 shall provide for the methods of conducting investigations under
5 this section and shall assure that steps are taken to avoid any
6 conflict of interest between the investigator and service
7 delivery functions. Reports and investigations under this
8 section shall comply with chapter 7, where applicable.

9 * * *

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

12 * * *

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

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

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

19 (3) Provide for the delivery of services by the agency
20 or other service provider arranged for under the service plan
21 developed by the agency.

22 * * *

23 Section 503. Grounds for denying employment.

24 (a) General rule.--In no case shall a facility hire an
25 applicant or retain an employee required to submit information
26 pursuant to section 502(a) if the applicant's or employee's
27 criminal history record information indicates the applicant or
28 employee has been convicted [under one or more provisions of 18 <—
29 Pa.C.S. (relating to crimes and offenses):] OF ANY OF THE <—
30 FOLLOWING OFFENSES:

<—

1 [Section 2502(a) or (b) (relating to murder).‡

2 ~~Chapter 25 (relating to criminal homicide).~~

3 Section 3121 (relating to rape).

4 Section 3122.1 (relating to statutory sexual assault).

5 Section 3123 (relating to involuntary deviate sexual
6 intercourse).

7 Section 3124.1 (relating to sexual assault).

8 Section 3125 (relating to aggravated indecent assault).

9 Section 3126 (relating to indecent assault).

10 Section 4302 (relating to incest).

11 Section 6312 (relating to sexual abuse of children).

12 (b) Other offenses.--In no case may a facility hire an
13 applicant or retain an employee required to submit information
14 pursuant to section 502(a) if the applicant's or employee's
15 criminal history record information indicates the applicant or
16 employee has been convicted within ten years immediately
17 preceding the date of the report of one or more of the following
18 offenses:

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

22 (2) An offense under one or more of the following
23 provisions of 18 Pa.C.S.:

<—

24 ‡Chapter 25 (relating to criminal homicide) except
25 for section 2502(a) and (b).‡

<—

26 Section 2702 (relating to aggravated assault).

27 Section 2901 (relating to kidnapping).

28 Section 2902 (relating to unlawful restraint).

29 Section 3301 (relating to arson and related
30 offenses).

1 Section 3502 (relating to burglary).

2 Section 3701 (relating to robbery).

3 A felony offense under Chapter 39 (relating to theft
4 and related offenses), or two or more misdemeanors under
5 Chapter 39.

6 Section 4101 (relating to forgery).

7 Section 4304 (relating to endangering welfare of
8 children).

9 Section 4305 (relating to dealing in infant
10 children).

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

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

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

17 Section 6301 (relating to corruption of minors).] <—

18 (1) AN OFFENSE DESIGNATED AS A FELONY UNDER THE ACT OF <—
19 APRIL 14, 1972 (P.L.233, NO.64), KNOWN AS THE CONTROLLED
20 SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT.

21 (2) AN OFFENSE UNDER ONE OR MORE OF THE FOLLOWING
22 PROVISIONS OF 18 PA.C.S. (RELATING TO CRIMES AND OFFENSES):

23 CHAPTER 25 (RELATING TO CRIMINAL HOMICIDE).

24 SECTION 2702 (RELATING TO AGGRAVATED ASSAULT).

25 SECTION 2901 (RELATING TO KIDNAPPING).

26 SECTION 2902 (RELATING TO UNLAWFUL RESTRAINT).

27 SECTION 3121 (RELATING TO RAPE).

28 SECTION 3122.1 (RELATING TO STATUTORY SEXUAL
29 ASSAULT).

30 SECTION 3123 (RELATING TO INVOLUNTARY DEVIATE SEXUAL

1 INTERCOURSE).

2 SECTION 3125 (RELATING TO AGGRAVATED INDECENT
3 ASSAULT).

4 SECTION 3126 (RELATING TO INDECENT ASSAULT).

5 SECTION 3127 (RELATING TO INDECENT EXPOSURE).

6 SECTION 3301 (RELATING TO ARSON AND RELATED
7 OFFENSES).

8 SECTION 3502 (RELATING TO BURGLARY).

9 SECTION 3701 (RELATING TO ROBBERY).

10 A FELONY OFFENSE UNDER CHAPTER 39 (RELATING TO THEFT
11 AND RELATED OFFENSES) OR TWO OR MORE MISDEMEANORS UNDER
12 CHAPTER 39.

13 SECTION 4101 (RELATING TO FORGERY).

14 SECTION 4114 (RELATING TO SECURING EXECUTION OF
15 DOCUMENTS BY DECEPTION).

16 SECTION 4303 (RELATING TO CONCEALING DEATH OF CHILD).

17 SECTION 4304 (RELATING TO ENDANGERING WELFARE OF
18 CHILDREN).

19 SECTION 4305 (RELATING TO DEALING IN INFANT
20 CHILDREN).

21 SECTION 4952 (RELATING TO INTIMIDATION OF WITNESSES
22 OR VICTIMS).

23 SECTION 4953 (RELATING TO RETALIATION AGAINST WITNESS
24 OR VICTIM).

25 A FELONY OFFENSE UNDER SECTION 5902(B) (RELATING TO
26 PROSTITUTION AND RELATED OFFENSES).

27 SECTION 5903(C) OR (D) (RELATING TO OBSCENE AND OTHER
28 SEXUAL MATERIALS AND PERFORMANCES).

29 SECTION 6301 (RELATING TO CORRUPTION OF MINORS).

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

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

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

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

7 CHAPTER 7

8 REPORTING SUSPECTED ABUSE BY EMPLOYEES

9 Section 701. Reporting by employees.

10 (a) Mandatory reporting to agency.--

11 (1) An employee or an administrator who has reasonable
12 cause to suspect that a recipient is a victim of abuse shall
13 immediately make an oral report to the agency. If applicable,
14 the agency shall advise the employee or administrator of
15 additional reporting requirements that may pertain under
16 subsection (b). An employee shall notify the administrator
17 immediately following the report to the agency.

18 (2) Within 48 hours of making the oral report, the
19 employee or administrator shall make a written report to the
20 agency. The agency shall notify the administrator that a
21 report of abuse has been made with the agency.

22 (3) The employee may request the administrator to make,
23 or to assist the employee to make, the oral and written
24 reports required by this subsection.

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

26 (1) An employee or an administrator who has reasonable
27 cause to suspect that a recipient is the victim of sexual
28 abuse or serious bodily injury or that a death is suspicious
29 shall, in addition to contacting the agency, immediately
30 contact law enforcement officials to make an oral report. An

1 employee shall notify the administrator immediately following
2 the report to law enforcement officials.

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

6 (3) The law enforcement officials shall notify the
7 administrator that a report has been made with the law
8 enforcement officials.

9 (4) The employee may request the administrator to make,
10 or to assist the employee to make, the oral and written
11 reports to law enforcement required by this subsection.

12 (c) Contents of report.--A written report under this section
13 shall be in a manner and on forms prescribed by the department.

14 The report shall include, at a minimum, the following
15 information:

16 (1) Name, age and address of the recipient.

17 (2) Name and address of the recipient's guardian or next
18 of kin.

19 (3) Name and address of the facility.

20 (4) Nature of the alleged offense.

21 (5) Any specific comments or observations that are
22 directly related to the alleged incident and the individual
23 involved.

24 Section 702. Reports to department and coroner.

25 (a) Department.--

26 (1) Within 48 hours of receipt of a written report under
27 section 701(a) involving sexual abuse, serious bodily injury
28 or suspicious death, the agency shall transmit a written
29 report to the department. Supplemental reports shall be
30 transmitted as they are obtained by the agency.

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

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

5 (ii) Where the suspected abuse occurred.

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

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

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

14 (vi) The source of the report.

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

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

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

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

27 Section 703. Investigation.

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

1 be filed.

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

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

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

16 (e) Compliance with Chapter 3.--In addition to the
17 provisions of this section, the agency shall comply with Chapter
18 3.

19 Section 704. Restrictions on employees.

20 (a) Plan of supervision.--Upon notification that an employee
21 is alleged to have committed abuse, the facility shall
22 immediately implement a plan of supervision or, where
23 appropriate, suspension of the employee, subject to approval by
24 the agency and by the Commonwealth agency with regulatory
25 authority over the facility. A plan of supervision for a home
26 health care agency must include periodic random direct
27 inspections of care-dependent individuals by a facility employee
28 who has been continuously employed by that facility for a period
29 of at least one year.

30 (b) Prohibition.--Upon the filing of criminal charges

1 against an employee, the Commonwealth agency which licenses the
2 facility shall order the facility to immediately prohibit that
3 employee from having access to recipients at the facility. If
4 that employee is a director, operator, administrator or
5 supervisor, that employee shall be subject to restrictions
6 deemed appropriate by the Commonwealth agency which licenses the
7 facility to assure the safety of recipients of the facility.
8 Section 705. Confidentiality of and access to confidential
9 reports.

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

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

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

17 (2) An employee of the Department of Health or the
18 Department of Public Welfare in the course of official
19 duties.

20 (3) An employee of an agency of another state which
21 performs protective services similar to those under this
22 chapter.

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

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

1 (6) A guardian of the recipient.

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

4 (8) The Attorney General.

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

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

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

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

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

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

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

28 Section 706. Penalties.

29 (a) Administrative.--

30 (1) An administrator who intentionally or willfully

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

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

13 (3) The Commonwealth agency or Commonwealth agencies
14 which regulate the facility have jurisdiction to determine
15 violations of this chapter and may issue an order assessing a
16 civil penalty of not more than \$2,500. An order under this
17 paragraph is subject to 2 Pa.C.S. Ch. 5, Subch. A (relating
18 to practice and procedure of Commonwealth agencies) and Ch.
19 7, Subch. A (relating to judicial review of Commonwealth
20 agency action).

21 (b) Criminal.--

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

27 (2) A facility owner that intentionally or willfully
28 fails to comply with, or obstructs compliance with, this
29 chapter, commits a misdemeanor of the third degree and shall,
30 upon conviction, be sentenced to pay a fine of \$2,500 or to

1 imprisonment for not more than one year, or both.

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

7 SECTION 707. REGULATIONS.

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8 THE DEPARTMENT OF AGING, THE DEPARTMENT OF HEALTH AND THE
9 DEPARTMENT OF PUBLIC WELFARE SHALL PROMULGATE THE REGULATIONS
10 NECESSARY TO CARRY OUT THIS CHAPTER.

11 Section 4. This act shall take effect in 180 days.