
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1681 Session of
2021

INTRODUCED BY HENNESSEY, WHEELAND, SCHLEGEL CULVER, MILLARD AND
BOBACK, JUNE 23, 2021

REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES,
JUNE 23, 2021

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; and
7 making repeals," in preliminary provisions, further providing
8 for legislative policy and for definitions; in
9 administration, further providing for duties of department
10 and area agencies on aging, providing for duties of financial
11 institutions and fiduciaries, further providing for reporting
12 and protection from retaliation and immunity, repealing
13 provisions relating to investigations of reports of need for
14 protective services and to provision of services and access
15 to records and persons, providing for receipt and
16 investigation of reports and for provision of protective
17 services, repealing provisions relating to immunity from
18 civil and criminal liability and to confidentiality of
19 records, further providing for involuntary intervention by
20 emergency court order, repealing provisions relating to
21 individual rights, to financial obligations and liabilities
22 and payments, to regulations and enforcement and to funds for
23 payment of administration of chapter and providing for
24 confidentiality of records, for rights of older adults and
25 for electronic records; in criminal history for employees,
26 repealing provisions relating to definitions, to information
27 relating to prospective facility personnel and to grounds for
28 denying employment, providing for criminal history and
29 repealing provisions relating to regulations, to violations,
30 to provisional employees for limited periods, to State Police
31 and to applicability; in reporting suspected abuse by
32 employees, repealing provisions relating to reports to
33 department and coroner, to investigation, to restrictions on

1 employees, to confidentiality of and access to confidential
2 reports and to penalties, providing for penalties, repealing
3 provisions relating to immunity, providing for immunity from
4 civil and criminal liability and for funding and further
5 providing for regulations.

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

8 Section 1. Sections 102, 103 and 301 of the act of November
9 6, 1987 (P.L.381, No.79), known as the Older Adults Protective
10 Services Act, are amended to read:

11 Section 102. Legislative [policy] intent.

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

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

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

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

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

1 (5) It is the policy of the Commonwealth that
2 convictions for certain offenses that evidence a reckless
3 disregard for the vulnerability of care-dependent
4 populations, certain offenses involving misappropriation or
5 misuse of property or convictions that involve inappropriate
6 or irresponsible behavior may legitimately warrant time-
7 limited bans on employment working with older adults under
8 this act.

9 Section 103. Definitions.

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

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

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

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

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

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

26 No older adult shall be found to be abused solely on the grounds
27 of environmental factors which are beyond the control of the
28 older adult or the caretaker, such as inadequate housing,
29 furnishings, income, clothing or medical care.]

30 (3) Sexual abuse, including:

- 1 (i) rape;
- 2 (ii) involuntary deviate sexual intercourse;
- 3 (iii) sexual assault;
- 4 (iv) aggravated indecent assault;
- 5 (v) indecent assault; and
- 6 (vi) incest.
- 7 (4) Sexual harassment, including:
 - 8 (i) unwelcome sexual advances;
 - 9 (ii) requests for sexual favors; and
 - 10 (iii) other unwelcome verbal or physical conduct of
11 a sexual nature.

12 "Administrator." The person responsible for the
13 [administration] management of a facility. The term includes a
14 person responsible for employment decisions or an independent
15 contractor responsible for administration of a facility.

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

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

23 "Applicant." An individual who submits an application to be
24 considered for employment.

25 "Area agency on aging" or "AAA." The single local agency or
26 its agent designated by the department within each planning and
27 service area to administer the delivery of protective services.

28 "Assessment." The evaluation of an older adult's social,
29 physical, psychological and cognitive well-being, along with a
30 description of the older adult's current resources and needs

1 using instruments and procedures established by the department.

2 "Care." Services provided to meet [a person's] an older
3 adult's need for personal care or health care[. Services may
4 include homemaker services, assistance with activities of daily
5 living, physical therapy, occupational therapy, speech therapy,
6 medical social services, home-care aide services, companion-care
7 services, private duty nursing services, respiratory therapy,
8 intravenous therapy, in-home dialysis and durable medical
9 equipment services, which are routinely provided unsupervised
10 and which require interaction with the care-dependent person.
11 The term does not include durable medical equipment delivery.]
12 which requires interaction with the older adult.

13 "Care-dependent individual." An adult who, due to physical
14 or cognitive disability, including Alzheimer's disease and
15 dementia, or impairment, requires assistance to meet needs for
16 food, shelter, clothing, personal care or health care.

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

25 "Client assessment." Social, physical and psychological
26 findings along with a description of the person's current
27 resources and needs.

28 "Court." A court of common pleas or a district magistrate
29 court, where applicable.] Any person who:

30 (1) is an owner, operator, manager or employee of any of

1 the following licensed or unlicensed entities:

2 (i) a nursing home, personal care home, assisted
3 living residence, private care residence or domiciliary
4 care home;

5 (ii) a community residential facility or
6 intermediate care facility for a person with mental
7 disabilities;

8 (iii) an adult daily living center;

9 (iv) a home health service provider; or

10 (v) a health care facility as defined in section
11 802.1 of the act of July 19, 1979 (P.L.130, No.48), known
12 as the Health Care Facilities Act.

13 (2) provides care to an older adult in the settings
14 described under paragraph (1);

15 (3) has an obligation to care for an older adult person
16 for monetary consideration in the settings described under
17 paragraph (1);

18 (4) is an adult who resides with an older adult and who
19 has a legal duty to provide care or who has voluntarily
20 assumed an obligation to provide care because of a familial
21 relationship, contract or court order; or

22 (5) is an adult who does not reside with an older adult
23 but who has a legal duty to provide care or who has
24 affirmatively assumed a responsibility for care or who has
25 responsibility by contract or court order.

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

29 "Consent." Authorization or approval that, where feasible,
30 is obtained in writing.

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

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

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

11 (1) is employed by a facility, or the affiliated
12 corporate entity of a facility, or enters into a contractual
13 relationship with a facility, an older adult, an older
14 adult's family, agent, legal representative or the affiliated
15 corporate entity of a facility, to provide care to an older
16 adult;

17 (2) has unsupervised access to another individual and
18 that individual's living quarters, resources or personal
19 records; or

20 (3) is a student doing an internship or clinical
21 rotation or any other individual who has been granted access
22 to a facility or older adult to perform a clinical service
23 for a fee paid by the facility.

24 "Exploitation." An act or course of conduct by a caretaker
25 or other person against an older adult or an older adult's
26 resources, without the informed consent or authorization of the
27 older adult or with consent or authorization obtained through
28 misrepresentation, coercion or threats of force, [that results]
29 resulting in monetary, personal or other benefit, gain or profit
30 for [the perpetrator] that caretaker or person, or monetary or

1 personal loss to the older adult.

2 "Facility." Any of the following:

3 (1) A domiciliary care home as defined in section 2202-A
4 of the act of April 9, 1929 (P.L.177, No.175), known as The
5 Administrative Code of 1929.

6 (2) [A home health care agency.]

7 (3) A long-term care nursing facility as defined in
8 section 802.1 of the act of July 19, 1979 (P.L.130, No.48),
9 known as the Health Care Facilities Act.] Any of the
10 following entities as defined in section 802.1 of the Health
11 Care Facilities Act:

12 (i) A home health care agency.

13 (ii) A long-term care nursing facility.

14 (iii) A hospice.

15 (iv) A home care agency.

16 (v) A home care registry.

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

20 (5) A personal care home as defined in section 1001 of
21 the act of June 13, 1967 (P.L.31, No.21), known as the
22 [Public Welfare] Human Services Code.

23 (6) An assisted living residence as defined in section
24 1001 of the Human Services Code.

25 (7) A PACE provider as defined in section 1894 of the
26 Social Security Act (49 Stat. 620, 42 U.S.C. § 1395eee).

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

1 "Fiduciary." A guardian, custodian, trustee, agent, personal
2 representative or other person authorized or required to act on
3 behalf of an older adult.

4 "Financial exploitation." The wrongful or unauthorized
5 taking or attempt to take by withholding, appropriation,
6 concealment or use of money, assets or property of an older
7 adult, including any act or omission taken by a person,
8 including through the use of a power of attorney, guardianship,
9 custodian, trustee, personal representative or conservatorship
10 of an older adult or by an individual who stands in a position
11 of trust and confidence with the older adult, including business
12 transactions to:

13 (1) obtain or attempt to obtain control, through
14 deception, intimidation or undue influence, over the older
15 adult's money, assets or property to deprive the older adult
16 of the ownership, use, benefit or possession of the older
17 adult's money, assets or property; or

18 (2) convert or attempt to convert money, assets or
19 property of the older adult to deprive the older adult of the
20 ownership, use, benefit or possession of the older adult's
21 money, assets or property.

22 "Financial institution." Any of the following:

23 (1) An insured bank as defined in section 3(h) of the
24 Federal Deposit Insurance Act (64 Stat. 873, 12 U.S.C. §
25 1813(h)).

26 (2) A commercial bank or trust company.

27 (3) A private banker.

28 (4) An agency or branch of a foreign bank in the United
29 States.

30 (5) Any credit union.

1 (6) A thrift institution.

2 (7) A broker or dealer registered with the Securities
3 and Exchange Commission under the Securities Exchange Act of
4 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.).

5 (8) A broker or dealer in securities or commodities.

6 (9) An investment banker or investment company.

7 (10) A currency exchange.

8 (11) An issuer, redeemer or cashier of travelers'
9 checks, checks, money orders or similar instruments.

10 (12) An operator of a credit card system.

11 (13) A loan or finance company.

12 (14) A licensed sender of money or any other person who
13 engages as a business in the transmission of funds, including
14 any person who engages as a business in an informal money
15 transfer system or any network of people who engage as a
16 business in facilitating the transfer of money domestically
17 or internationally outside of the conventional financial
18 institutions system.

19 (15) A person required to be registered as an investment
20 adviser by the Investment Advisers Act of 1940 (54 Stat. 847,
21 15 U.S.C. § 80b-1 et seq.) or under the laws of this
22 Commonwealth.

23 (16) Any business or agency that engages in activity the
24 department determines, by regulation, to be similar to,
25 related to or a substitute for any activity engaged in by a
26 business described in paragraphs (1) through (14).

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

28 (1) A home health care organization or agency licensed
29 by the Department of Health.

30 (2) A public or private agency or organization, or part

1 of an agency or organization, which provides care to a care-
2 dependent individual in the individual's place of residence.]

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

9 "Law enforcement official." Any of the following:

10 (1) A police officer of a municipality.

11 (2) A district attorney.

12 (3) The Pennsylvania State Police.

13 (4) A county sheriff.

14 (5) The Attorney General of the Commonwealth.

15 (6) The United States Department of Justice and other
16 Federal law enforcement agencies.

17 (7) A law enforcement authority in another state.

18 "Mandatory reporter." Any of the following:

19 (1) A facility employee or administrator.

20 (2) A health care provider that is:

21 (i) a licensed hospital or health care facility; or

22 (ii) an individual licensed, certified or otherwise

23 regulated to provide health care services under the laws

24 of this Commonwealth, including a physician,

25 geriatrician, neurologist, podiatrist, optometrist,

26 psychologist, psychiatrist, physical therapist, certified

27 nurse practitioner, registered nurse, nurse midwife,

28 physician's assistant, chiropractor, dentist, pharmacist

29 or any other individual accredited or certified to

30 provide behavioral health services.

1 (3) Law enforcement official.

2 (4) Coroner.

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

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

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

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

23 ["Protective setting." A setting chosen by the agency where
24 services can be provided in the least restrictive environment to
25 protect the physical and mental well-being of the older adult.]

26 "Recipient." An individual who receives care, services or
27 treatment in or from a facility.

28 "Secretary." The Secretary of Aging of the Commonwealth.

29 ["Serious bodily injury." Injury which creates a substantial
30 risk of death or which causes serious permanent disfigurement or

1 protracted loss or impairment of the function of a body member
2 or organ.

3 "Serious physical injury." An injury that:

4 (1) causes a person severe pain; or

5 (2) significantly impairs a person's physical
6 functioning, either temporarily or permanently.]

7 "Serious bodily injury." Injury that:

8 (1) creates a substantial risk of death; or

9 (2) causes serious disfigurement, protracted loss or
10 impairment of the function of a body member or organ or
11 serious pain. The term does not include an isolated
12 accidental injury self-inflicted by the older adult.

13 "Service plan." A written plan [developed]:

14 (1) Developed by the [agency] area agency on aging on
15 the basis of comprehensive assessment of [a client's need
16 which describes identified needs, goals to be achieved and
17 specific services to support goal attainment, with regular
18 follow-up and predetermined reassessment of client progress.

19 Specific services to support goal attainment may include, but
20 is not limited to, homemaker services, home-delivered meals,
21 attendant care, other in-home services, emergency shelter or
22 food, legal aid services, transportation and other such
23 services. Service plans are cooperatively developed by the
24 agency staff, the client or the client's appointed guardian,
25 and other family members when appropriate. The plan shall
26 also address, where applicable, special needs of other
27 members of the household unit as they may affect the older
28 adult's need for protective services.

29 "Sexual abuse." Intentionally, knowingly or recklessly
30 causing or attempting to cause rape, involuntary deviate sexual

1 intercourse, sexual assault, statutory sexual assault,
2 aggravated indecent assault, indecent assault or incest.] an
3 older adult that describes identified needs and specific
4 services designed to support goal attainment.

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

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

9 (i) Homemaker services.

10 (ii) Home-delivered meals.

11 (iii) Personal care.

12 (iv) Other in-home services.

13 (v) Emergency shelter or food.

14 (vi) Legal aid services.

15 (vii) Transportation.

16 (viii) Victim services or counseling.

17 (ix) Referrals for cognitive assessment.

18 (x) Other such services.

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

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

26 "Suspicious death." A death that is unexpected with
27 unexplained circumstances or cause.

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

29 (a) Public information and interdepartmental consultation.--

30 The department shall conduct an ongoing public awareness

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

9 (b) Staff training.--

10 (1) The department shall, after consultation with a
11 representative of the network of the area agencies on aging,
12 establish minimum standards of training and experience
13 [which] that protective services providers funded by the
14 department shall be required to follow in the selection and
15 assignment of staff for the provision of protective services.

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

19 (c) Protective services plans.--

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

28 (2) [The description of] Subject to the requirements of
29 section 312, the department shall establish the [methods]
30 standards that will be used by the [agency] AAA, its

1 designees and its service providers to assure the privacy of
2 older adults receiving services and the confidentiality of
3 all records [shall be established by the department]. The
4 department shall establish a schedule for the submission and
5 approval of the plans.

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

15 Section 2. The act is amended by adding a section to read:
16 Section 301.1. Duties of financial institutions and
17 fiduciaries.

18 (a) Training.--A financial institution with employees in
19 this Commonwealth, or with employees regularly engaging in
20 financial transactions with, or on behalf of, older adults in
21 this Commonwealth, shall adopt and implement a training program
22 for its employees to:

23 (1) Identify activities that constitute the financial
24 exploitation of older adults.

25 (2) Recognize signs of potential financial exploitation
26 of older adults.

27 (3) Prevent and deter the financial exploitation of
28 older adults.

29 (4) Respond to suspected cases of financial exploitation
30 of older adults.

1 (b) Model training program.--The department, in cooperation
2 with the Department of Banking and Securities and
3 representatives of the financial services industry in this
4 Commonwealth, shall establish a model training program that may
5 be used to satisfy the requirements of subsection (a). A
6 national organization's training program may be adopted as the
7 model program if the training is certified or accredited.

8 (c) Regulated financial institutions.--A financial
9 institution subject to visitorial examination by a regulatory
10 authority that incorporates the training activities required by
11 subsection (a) into the financial institution's employee
12 training program to control fraud and money laundering that is
13 subject to examination by the regulatory authority shall be
14 deemed to be in compliance with subsection (a).

15 (d) Authority to prohibit disbursement of funds and
16 transactions.--

17 (1) If a financial institution or fiduciary reasonably
18 believes after initiating an internal review that a requested
19 disbursement or transaction may result in the financial
20 exploitation of an older adult, the financial institution or
21 fiduciary may, but is not required to, refuse to make the
22 disbursement or engage in the transaction, as appropriate, to
23 prevent financial exploitation of the older adult with
24 respect to the account:

25 (i) of the older adult;

26 (ii) on which the older adult is a beneficiary,
27 including a trust or guardianship account; or

28 (iii) of a person suspected of perpetrating
29 financial exploitation of an older adult.

30 (2) A financial institution or fiduciary may, but is not

1 required to, refuse to disburse funds or engage in a
2 transaction under this section if an area agency on aging or
3 law enforcement official requests the financial institution
4 or fiduciary to do so in writing or provides information in
5 writing to the financial institution or fiduciary
6 demonstrating that it is reasonable to believe that financial
7 exploitation of an older adult may have occurred, may have
8 been attempted or is being attempted.

9 (3) A financial institution or fiduciary is not required
10 to refuse to disburse funds or engage in a transaction when
11 provided with information alleging that financial
12 exploitation of an older adult may have occurred, may have
13 been attempted or is being attempted and may use the
14 financial institution's or fiduciary's discretion to
15 determine whether or not to refuse to disburse funds based on
16 the information available to the financial institution or
17 fiduciary.

18 (4) Except as prohibited by Federal or State law, a
19 financial institution or fiduciary that refuses to disburse
20 funds or engage in a transaction based on a reasonable belief
21 that financial exploitation of an older adult may have
22 occurred, may have been attempted or is being attempted
23 shall:

24 (i) Make a reasonable effort to notify all persons
25 authorized to transact business on the account or that
26 are beneficiaries of the account affected by the refusal
27 to make the disbursement or engage in the transaction,
28 orally or in writing, except for any person reasonably
29 believed to have engaged in the suspected or attempted
30 financial exploitation of the older adult.

1 (ii) Report the incident to the area agency on
2 aging. The financial institution or fiduciary may also
3 report the incident to law enforcement officials.

4 (5) A notification provided under paragraph (4)(i) is
5 sufficient if the notice states that a financial institution
6 or fiduciary has temporarily blocked the disbursement of
7 funds or delayed the execution of transactions as authorized
8 by this subsection and identifies the name of the financial
9 institution or fiduciary and any account or transactions to
10 which the notification applies and provides a name and
11 telephone number of a contact person representing the
12 financial institution or fiduciary or the area agency on
13 aging or law enforcement agency to which a report has been
14 provided under paragraph (4)(ii).

15 (6) Any refusal to disburse funds or engage in a
16 transaction as authorized by this section based on the
17 reasonable belief of a financial institution or fiduciary
18 that financial exploitation of an older adult may have
19 occurred, may have been attempted or is being attempted shall
20 expire upon the sooner of:

21 (i) fifteen business days after the date on which
22 the financial institution or fiduciary first refused to
23 disburse the funds or engage in a transaction, unless
24 sooner terminated or extended by an order of a court of
25 competent jurisdiction, or upon a request made by a law
26 enforcement official, the department or an area agency on
27 aging. An additional 25 business days shall be permitted,
28 if requested by a law enforcement official, the
29 department or an area agency on aging or following the
30 submission of an application for a court order further

1 extending the time period; or

2 (ii) except as provided by paragraph (i), the time
3 when the financial institution or fiduciary is satisfied
4 that the disbursement will not result in financial harm
5 to the older adult. A request provided by subparagraph
6 (i) shall be documented in writing.

7 (7) A court of competent jurisdiction may enter an order
8 extending the refusal by the financial institution or
9 fiduciary to disburse funds based on a reasonable belief that
10 financial exploitation of an older adult may have occurred,
11 may have been attempted or is being attempted. A court of
12 competent jurisdiction may also order other protective relief
13 as authorized.

14 (e) Immunity.--Except as provided by subsection (g), a
15 financial institution or fiduciary and its directors, officers,
16 employees or agents shall not be subject to a claim for damages
17 or other civil or criminal liability for:

18 (1) The identification or failure to identify the
19 financial exploitation of an older adult.

20 (2) A decision to make a report or not make a report
21 under subsection (a).

22 (3) A refusal to disburse funds or engage in a
23 transaction under subsection (c) or a decision to allow the
24 disbursement of funds or the conduct of transactions under
25 subsection (c).

26 (4) The release of information to a law enforcement
27 agency, the department or an area agency on aging as
28 authorized by this chapter.

29 (f) Additional immunities and defenses.--Notwithstanding any
30 other law to the contrary:

1 (1) The refusal by a financial institution to engage in
2 a transaction as authorized under this subsection shall not
3 constitute the wrongful dishonor of an item under 13 Pa.C.S.
4 § 4402 (relating to liability of bank to customer for
5 wrongful dishonor; time of determining insufficiency of
6 account).

7 (2) A reasonable belief that payment of a check will
8 facilitate the financial exploitation of an older adult shall
9 constitute reasonable grounds to doubt the collectability of
10 the item for purposes of the Expedited Funds Availability Act
11 (Public Law 100-86, 12 U.S.C. § 4001 et seq.), the Check
12 Clearing for the 21st Century Act (Public Law 108-100, 12
13 U.S.C. § 5001 et seq.) and 12 C.F.R. Pt. 229 (relating to
14 availability of funds and collection of checks (regulation
15 cc)).

16 (g) Limitation.--The immunities and defenses provided under
17 subsections (e) and (f) shall not apply to a director, officer,
18 employee or agent of a financial institution or fiduciary who
19 has been found to have engaged in financial exploitation of an
20 older adult.

21 (h) Suspicious activity reports.--

22 (1) The department shall use its best efforts to enter
23 into a cooperative agreement with the United States
24 Department of the Treasury to receive or access suspicious
25 activity reports filed by financial institutions with the
26 United States Department of the Treasury.

27 (2) Except as prohibited by Federal law, any other
28 Commonwealth agency that receives or is granted access to
29 such reports from the United States Department of the
30 Treasury shall make the reports or access to the reports

1 available to the department in order to facilitate the
2 discharge of the department's duties under this act.

3 Section 3. Section 302 of the act is amended to read:

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

5 (a) [Reporting] Voluntary reports.--Any person, including an
6 employee of a financial institution or fiduciary, having
7 reasonable cause to [believe] suspect that an older adult [is in
8 need of protective services] may be a victim of abuse, neglect,
9 exploitation or abandonment may report such information to the
10 [agency which is the local provider of protective services.

11 Where applicable, reports shall comply with the provisions of
12 Chapter 7.

13 (b) Receiving reports.--The agency shall be capable of
14 receiving reports of older adults in need of protective services
15 24 hours a day, seven days a week (including holidays). This
16 capability may include the use of a local emergency response
17 system or a crisis intervention agency, provided that access can
18 be made to a protective services caseworker in appropriate
19 emergency situations as set forth in regulations promulgated by
20 the department. All reports received orally under this section
21 shall be reduced to writing immediately by the person who
22 receives the report.

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

1 and punitive damages or \$5,000, whichever is greater.

2 (c.1) Intimidation; penalty.--Any person, including the
3 victim, with knowledge sufficient to justify making a report or
4 cooperating with the agency, including possibly providing
5 testimony in any administrative or judicial proceeding, shall be
6 free from any intimidation by an employer or by any other person
7 or entity. Any person who violates this subsection is subject to
8 civil lawsuit by the person intimidated or the victim wherein
9 the person intimidated or the victim shall recover treble
10 compensatory damages, compensatory and punitive damages or
11 \$5,000, whichever is greater.

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

21 (e) Mandatory reports.--

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

30 (2) A mandatory reporter who has reasonable cause to

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

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

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

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

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

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

24 (v) Any relevant information known related to the
25 identity of the alleged perpetrator, including, but not
26 limited to, name, age, sex and relationship to the older
27 adult.

28 (vi) Name of the individual making the report,
29 contact information for the reporter and information
30 regarding any actions taken by the reporter in response

1 to the incident.

2 (4) A mandatory reporter shall be trained by the
3 department or its agent on the requirements to report under
4 this act.

5 (f) Coroner.--For a report under this section that concerns
6 the death of an older adult, if there is reasonable cause to
7 suspect that the older adult has died of abuse, neglect,
8 exploitation or abandonment, the area agency on aging shall give
9 the oral report and forward a copy of the written report to the
10 appropriate coroner within 24 hours.

11 Section 4. Sections 303 and 304 of the act are repealed:

12 [Section 303. Investigations of reports of need for protective
13 services.]

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

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

1 notified.

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

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

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

28 (a) Availability of protective services.--The agency shall
29 offer protective services under any of the following conditions:

30 (1) An older adult requests such services.

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

3 (3) If, after investigation of a report, the agency
4 determines the older adult is in need of such services.

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

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

19 (d) Access to records.--The agency shall have access to all
20 records relevant to:

21 (1) Investigations of reports under section 303.

22 (2) Assessment of client need.

23 (3) Service planning when an older adult's need for
24 protective services has been or is being established.

25 (4) The delivery of services arranged for under the
26 service plan developed by the agency to respond to an older
27 adult's assessed need for specific services.

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

1 (1) Investigate reports under section 303 and Chapter 7.

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

4 (3) Provide for the delivery of services by the agency
5 or other service provider arranged for under the service plan
6 developed by the agency.

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

16 (1) The caretaker or a third party has interfered with
17 the completion of the investigation or the client assessment
18 and service plan or the delivery of services.

19 (2) The agency can demonstrate that the older adult
20 reported to be in need of protective services is denying
21 access because of coercion, extortion or justifiable fear of
22 future abuse, neglect, or exploitation or abandonment.

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

29 (h) Denial of access to records.--If the agency is denied
30 access to records necessary for the completion of a proper

1 investigation of a report or a client assessment and service
2 plan, or the delivery of needed services in order to prevent
3 further abuse, neglect, exploitation or abandonment of the older
4 adult reported to be in need of protective services, the agency
5 may petition the court of common pleas for an order requiring
6 the appropriate access when either of the following conditions
7 apply:

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

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

15 Section 5. The act is amended by adding sections to read:

16 Section 304.1. Receipt and investigation of reports.

17 (a) Receipt.--The area agency on aging shall be capable of
18 receiving reports of older adults in need of protective services
19 24 hours per day, seven days per week. This capability may
20 include the use of a local emergency response system or a crisis
21 intervention agency provided that access can be made to a
22 protective services caseworker in appropriate emergency
23 situations, as set forth in regulations issued by the
24 department. All reports received orally shall be documented
25 immediately in a manner set forth by the department.

26 (b) Investigation.--

27 (1) The area agency on aging shall investigate each
28 report in accordance with regulations issued by the
29 department. The investigation shall be initiated within 72
30 hours after the receipt of the report and carried out under

1 regulations issued by the department. The regulations shall
2 provide for the methods of conducting investigations and
3 shall assure that steps are taken to avoid any conflict of
4 interest.

5 (2) Consent of the older adult is not required in order
6 to begin investigating reports of abuse, neglect,
7 exploitation or abandonment.

8 (c) Access to older adults.--

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

12 (i) Investigate reports.

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

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

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

22 (i) Access to the older adult.

23 (ii) A medical evaluation of the older adult.

24 (iii) A psychiatric or psychological evaluation of
25 the older adult.

26 (3) For purposes of paragraph (2), denial of access may
27 include:

28 (i) interference by a caretaker or third party with
29 the completion of the investigation or the assessment and
30 service plan or the delivery of services; or

1 (ii) refusal of the older person to permit or
2 cooperate with the AAA investigation as a result of
3 coercion, extortion or justifiable fear of future abuse,
4 neglect, exploitation, abandonment or death.

5 (d) Access to records.--

6 (1) The AAA shall, subject to the consent of the older
7 adult, have access to all records for the purposes of:

8 (i) Assessing an older adult's need for services.

9 (ii) Planning and delivery of services.

10 (iii) Investigating reports.

11 (2) Records of State agencies, private organizations,
12 financial institutions, fiduciaries, medical institutions and
13 practitioners and persons reasonably suspected of engaging in
14 or facilitating the abuse, neglect, exploitation or
15 abandonment of an older adult, which the AAA reasonably
16 believes to be necessary to complete an investigation or
17 assessment and service plan, shall be requested in written
18 form and be made available to the AAA unless the disclosure
19 would be prohibited by any other provision of Federal or
20 State law. Except as provided by a court order, access to
21 records of financial institutions shall be limited to records
22 relating to the most recent transaction or transactions that
23 may comprise financial exploitation and that occurred not
24 more than 60 calendar days prior to the first transaction
25 that was reported or 60 calendar days after the last
26 transaction that was reported.

27 (3) If the AAA can demonstrate that the older adult has
28 denied access to the older adult's records because of
29 incapacity, coercion, extortion or justifiable fear, the AAA
30 may petition the court for an order to require access.

1 (4) If any other entity or individual denies access to
2 the older adult's records, the AAA may petition the court for
3 an order to require access.

4 (5) The area agency on aging or the department may
5 compensate any person requested or ordered to provide records
6 to the AAA for the reasonable costs of producing records in a
7 manner consistent with the requirements of section 1115(a) of
8 the Right to Financial Privacy Act of 1978 (Public Law 96-
9 630, 12 U.S.C. § 3415).

10 (e) Investigations involving facilities.--

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

17 (2) The department and any other State agency shall
18 share information with one another and with mandatory
19 reporters, fiduciaries and financial institutions necessary
20 to ensure the health, safety and welfare of the older adult
21 and to assist financial institutions and fiduciaries in
22 exercising their authority to prohibit disbursement of funds
23 and transactions as provided by section 301.1(c).

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

29 (f) Investigations involving law enforcement.--

30 (1) Law enforcement officials, the area agency on aging

1 and mandatory reporters shall coordinate their respective
2 investigations and shall advise each other and provide any
3 applicable additional information on an ongoing basis.

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

7 (i) Suspicious death.

8 (ii) Serious bodily injury.

9 (iii) Sexual abuse.

10 (3) Following a referral to law enforcement:

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

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

16 (iii) To the extent a law enforcement agency
17 exercises discretion not to pursue or to defer a criminal
18 investigation or prosecution, the area agency on aging
19 may initiate civil proceedings to obtain a protective
20 order, seek injunctive relief or seek compensation or
21 restitution for damages from a person that abuses,
22 neglects, abandons or exploits an older adult.

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

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

30 (h) Substantiated reports.--

1 (1) If, after investigation by the area agency on aging,
2 the report is substantiated, the AAA, in conjunction with the
3 older adult, the older adult's caregiver, including the
4 healthcare provider or representative from the facility,
5 shall develop a service plan.

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

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

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

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

17 Section 304.2. Provision of protective services.

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

21 (1) either:

22 (i) an older adult requests protective services; or

23 (ii) another interested person requests protective
24 services on behalf of an older adult; and

25 (2) after investigation of a report, the AAA determines
26 the older adult is in need of protective services.

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

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

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

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

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

19 (i) Administering protective services plans.

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

22 (iii) Conducting investigations of reported abuse,
23 neglect, exploitation and abandonment.

24 (iv) Carrying out assessments and developing service
25 plans.

26 (v) Petitioning the court.

27 (vi) Providing for emergency involuntary
28 intervention.

29 (vii) Arranging for available services needed to
30 carry out service plans, which may include, as

1 appropriate, arranging for services for other persons in
2 the household unit in order to reduce, correct or
3 eliminate abuse, neglect, exploitation or abandonment of
4 an older adult.

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

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

19 Section 6. Sections 305 and 306 of the act are repealed:

20 [Section 305. Immunity from civil and criminal liability.

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

27 Section 306. Confidentiality of records.

28 (a) General rule.--Information contained in reports, records
29 of investigation, client assessment and service plans shall be
30 considered confidential and shall be maintained under

1 regulations promulgated by the department to safeguard
2 confidentiality. Except as provided below, this information
3 shall not be disclosed to anyone outside the agency other than
4 to a court of competent jurisdiction or pursuant to a court
5 order.

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

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

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

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

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

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

30 (6) For the purposes of monitoring agency performance,

1 appropriate staff of the department may access agency
2 protective services records.]

3 Section 7. Section 307 of the act is amended to read:

4 Section 307. Involuntary intervention by emergency court order.

5 (a) Emergency petition.--[Where there was clear and
6 convincing evidence that if protective services are not
7 provided, the person to be protected is at imminent risk of
8 death or serious physical harm, the agency may petition the
9 court for an emergency order to provide the necessary services.

10 The courts of common pleas of each judicial district shall
11 ensure that a judge or district justice is available on a 24-
12 hour-a-day, 365-day-a-year basis to accept and decide on
13 petitions for an emergency court order under this section
14 whenever the agency determines that a delay until normal court
15 hours would significantly increase the danger the older adult
16 faces.]

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

22 (2) The court of common pleas shall grant the AAA's
23 petition if it finds, by clear and convincing evidence, that
24 failure to provide protective services will place the older
25 adult at imminent risk of death, sexual abuse, serious bodily
26 injury or financial exploitation.

27 (3) The courts of common pleas of each judicial district
28 shall ensure that a judge or magisterial district judge is
29 available on a 24-hour-a-day, 365-days-a-year basis to accept
30 and rule on petitions for emergency court orders under this

1 section whenever the AAA determines that a delay until normal
2 court hours may significantly increase danger to the older
3 adult.

4 (b) Limited order.--The court, after finding clear and
5 convincing evidence of the need for an emergency order, shall
6 order only such protective services as are necessary to remove
7 the conditions creating the established need.

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

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

20 (e) Health and safety requirements.--The [agency] area
21 agency on aging shall take reasonable steps to [assure] ensure
22 that while the [person is receiving] older adult receives
23 protective services under an emergency court order, the [health
24 and safety needs of any of the person's dependents are met and
25 that] personal property and the dwelling the [person] older
26 adult occupies are secure. If any of the older adult's
27 dependents have health and safety needs, the AAA shall make a
28 referral to child protective services or adult protective
29 services based on the age of the dependent.

30 [(f) Exclusion of remedy.--Nothing in this chapter shall be

1 interpreted to deny any older adult access to the emergency
2 medical services or police protection that would be provided to
3 anyone, regardless of age, in similar circumstances.]

4 Section 8. Sections 308, 309, 310, and 311 of the act are
5 repealed:

6 [Section 308. Individual rights.

7 (a) Rights of protective services clients.--The agency shall
8 observe the following minimum requirements to safeguard the
9 rights of an older adult who is reported to be in need of
10 protective services:

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

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

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

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

28 (b) Rights of alleged abusers.--An individual who is alleged
29 in a protective services report to be a perpetrator of the
30 abuse, neglect, exploitation or abandonment of an older adult

1 shall be entitled to the following if the report is
2 substantiated by the agency:

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

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

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

15 Section 309. Financial obligations; liabilities and payments.

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

19 (1) Funding to provide or make available protective
20 services under this chapter shall not supplant any public and
21 private entitlements or resources for which persons receiving
22 protective services under this chapter are or may be
23 eligible, and shall not be available until such persons have
24 exhausted their eligibility and receipt of benefits under
25 said public and private entitlements or resources.

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

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

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

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

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

7 (v) Petitioning the court under sections 304 and
8 307.

9 (vi) Providing emergency involuntary intervention
10 under section 307.

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

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

25 (3) The obligation of the Commonwealth and the counties
26 to provide funds to the department or any agency for services
27 provided pursuant to this chapter shall be entirely
28 discharged by the appropriations made to the department or an
29 agency. Provided that the agency has met its responsibility
30 under the law, no action at law or equity shall be instituted

1 in any court to require the department, any agency, county or
2 the Commonwealth to provide benefits or services under this
3 chapter for which appropriations from the Commonwealth or
4 counties are not available.

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

9 Section 310. Regulations; enforcement.

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

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

21 Section 311. Funds for payment of administration of chapter.

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

24 Section 9. The act is amended by adding sections to read:

25 Section 312. Confidentiality of records.

26 (a) General rule.--Information contained in reports, records
27 of investigation, assessments and service plans created under
28 this act shall be considered privileged and confidential and
29 shall be maintained under regulations issued by the department.
30 Except as provided below, this information shall only be

1 disclosed by the area agency on aging for the purpose of
2 development and implementation of protective services. Neither
3 the department nor the AAA may release information that could be
4 detrimental to an older adult, except that such information
5 shall be released to law enforcement under subsection (b)(2).
6 All information contained in protective services records is
7 subject to other Federal and State confidentiality and security
8 laws.

9 (b) Access.--

10 (1) Any person in possession of protective services
11 records may only provide access to the records, or
12 information contained in the records, to:

13 (i) A court of competent jurisdiction or another
14 party pursuant to a court order for purposes of
15 implementation of this act or other law enforcement or
16 official governmental purposes, but not for use by
17 nongovernmental persons in civil litigation. A subpoena
18 shall not be deemed a court order for purposes of this
19 section.

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

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

28 (iv) The director or an individual specifically
29 designated in writing by the director of any hospital or
30 other medical institution where the older adult is being

1 treated, if the director or designee suspects that the
2 recipient is in need of protection under this act.

3 (v) A financial institution or fiduciary as
4 necessary to exercise the authority to prohibit
5 disbursement of funds and transactions provided by
6 section 301.1(c).

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

11 (3) The older adult who is the subject of a report or
12 the older adult's guardian, if the guardian is not named as
13 the alleged perpetrator, may receive, upon written request, a
14 summary of the report of need, except information that would
15 identify the person who made a report of suspected abuse,
16 neglect, exploitation or abandonment or persons who
17 cooperated in a subsequent investigation.

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

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

26 (6) The department or the AAA may collaborate or share a
27 summary of protective services information with State
28 agencies for purposes of official Commonwealth business.

29 (7) The department or the AAA may share a summary of
30 protective services information with another AAA that is

1 performing duties under this act that are relevant to older
2 adults within their jurisdictions.

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

7 (c) Protecting identity of reporter and cooperating
8 witnesses.--

9 (1) Except for disclosures to law enforcement officials,
10 the release of records that would identify the individual who
11 made a report under this act or an individual who cooperated
12 in a subsequent investigation is prohibited.

13 (2) Where records are provided pursuant to court order,
14 the identity of the reporter and cooperating witnesses shall
15 be redacted, unless otherwise ordered by the court after an
16 in camera review.

17 Section 313. Rights of older adults.

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

22 (b) Release of information.--As provided in section
23 312(b) (3), an older adult who is the subject of a report, or the
24 older adult's guardian, if the guardian is not named as the
25 alleged perpetrator in the report, may receive, upon written
26 request, a summary of information contained in the report of
27 need except information that would identify the person who made
28 a report of suspected abuse, neglect, exploitation or
29 abandonment or persons who cooperated in a subsequent
30 investigation.

1 (c) Appeal.--Any denial of protective services by the
2 department or an authorized area agency on aging under this act
3 may be appealed according to the provisions of the rules and
4 regulations issued by the department under Article XXII-A of the
5 act of April 9, 1929 (P.L.177, No.175), known as The
6 Administrative Code of 1929.
7 Section 314. Electronic records.

8 Any requirements of this act that information be prepared,
9 filed, submitted, requested, maintained or signed in writing may
10 be satisfied by the use of an electronic record or signature to
11 the extent otherwise permitted by law, unless the department, an
12 AAA or a law enforcement agency requires the use of a written
13 record or signature.

14 Section 10. Sections 501, 502 and 503 of the act are
15 repealed:

16 [Section 501. Definitions.

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

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

22 "State Police." The Pennsylvania State Police.

23 Section 502. Information relating to prospective facility
24 personnel.

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

30 (1) Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal

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

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

1 (b) (Reserved).

2 Section 503. Grounds for denying employment.

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

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

11 (2) An offense under one or more of the following
12 provisions of 18 Pa.C.S. (relating to crimes and offenses):

13 Chapter 25 (relating to criminal homicide).

14 Section 2702 (relating to aggravated assault).

15 Section 2901 (relating to kidnapping).

16 Section 2902 (relating to unlawful restraint).

17 Section 3121 (relating to rape).

18 Section 3122.1 (relating to statutory sexual
19 assault).

20 Section 3123 (relating to involuntary deviate sexual
21 intercourse).

22 Section 3124.1 (relating to sexual assault).

23 Section 3125 (relating to aggravated indecent
24 assault).

25 Section 3126 (relating to indecent assault).

26 Section 3127 (relating to indecent exposure).

27 Section 3301 (relating to arson and related
28 offenses).

29 Section 3502 (relating to burglary).

30 Section 3701 (relating to robbery).

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

4 Section 4101 (relating to forgery).

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

7 Section 4302 (relating to incest).

8 Section 4303 (relating to concealing death of child).

9 Section 4304 (relating to endangering welfare of
10 children).

11 Section 4305 (relating to dealing in infant
12 children).

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

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

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

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

21 Section 6301 (relating to corruption of minors).

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

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

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

28 Section 11. The act is amended by adding a section to read:
29 Section 503.1. Criminal history.

30 (a) Submission of information.--An individual identified

1 under subsection (b) shall submit the following information to a
2 facility or any other person responsible for employment
3 decisions or involved with the selection of employees:

4 (1) In accordance with 18 Pa.C.S. Ch. 91 (relating to
5 criminal history record information), a report of criminal
6 history record information from the Pennsylvania State Police
7 or a statement from the Pennsylvania State Police that the
8 central repository contains no information relating to the
9 individual. The criminal history record information shall be
10 limited to the information which may be disseminated under 18
11 Pa.C.S. § 9121(b) (2) (relating to general regulations).

12 (2) A report of Federal criminal history record
13 information pursuant to the Federal Bureau of Investigation's
14 appropriation under the Departments of State, Justice, and
15 Commerce, the Judiciary, and Related Agencies Appropriation
16 Act, 1973 (Public Law 92-544, 86 Stat. 1109). The department
17 shall act as an intermediary under this paragraph. For the
18 purpose of this paragraph, the individual shall submit a full
19 set of fingerprints in a manner prescribed by the department.
20 The Commonwealth shall submit the fingerprints to the Federal
21 Bureau of Investigation for a national criminal history
22 record check. The information obtained from the criminal
23 record check shall be used by the department to determine the
24 individual's eligibility for employment. The determination
25 shall be submitted to the administrator by the applicant,
26 prior to commencing employment, or by the employee. The
27 administrator shall ensure confidentiality of the
28 information. The provisions of 18 Pa.C.S. § 9121(b) (2) shall
29 not apply if the request for a report of Federal criminal
30 history record information is made under this section.

1 (b) Reports.--The following individuals shall submit the
2 reports of criminal history record information required under
3 subsection (a):

4 (1) An applicant, with the applicant's application.

5 (2) An employee.

6 (3) An administrator who has or may have direct contact
7 with a recipient.

8 (4) An operator who has or may have direct contact with
9 a recipient.

10 (c) New reports.--New reports of criminal history record
11 information shall be obtained in accordance with the following:

12 (1) Beginning on the effective date of this section, an
13 individual identified under subsection (b) shall obtain the
14 report of criminal history record information required under
15 subsection (a)(1) every 60 months. The date for required
16 renewal shall be determined from the date of the individual's
17 oldest report of criminal history record information.

18 (2) An individual identified under subsection (b) with a
19 current report of criminal history record information issued
20 before the effective date of this section shall be required
21 to obtain the report of criminal history record information
22 required under subsection (a)(1) within 60 months from the
23 date of the individual's oldest report of criminal history
24 record information or, if the current report of criminal
25 history record information is older than 60 months, within
26 two years of the effective date of this section.

27 (3) An individual identified under subsection (b) who
28 was previously not required to have a report of criminal
29 history information shall be required to obtain the reports
30 of criminal history information required under subsection (a)

1 not later than two years from the effective date of this
2 section.

3 (4) An individual identified under subsection (b)(1)
4 shall be required to submit the information required under
5 subsection (a) to the facility, which shall be obtained
6 within the preceding one-year period.

7 (d) Notice of new arrest or conviction.--

8 (1) If an employee is arrested for or convicted of an
9 offense that would constitute grounds for denying employment
10 under subsection (e), the employee shall provide the
11 administrator or designee with written notice not later than
12 72 hours after the arrest or conviction.

13 (2) If the person responsible for employment decisions
14 or the administrator has a reasonable belief that an employee
15 was arrested or convicted for an offense that would
16 constitute grounds for denying employment under subsection
17 (e), or the employee has provided notice as required under
18 paragraph (1), the person responsible for employment
19 decisions or the administrator shall immediately require the
20 employee to submit current information as required under
21 subsection (a). The facility shall pay for the cost of
22 providing the information under subsection (a).

23 (e) Prohibited offenses.--The following offenses and Federal
24 or out-of-State offenses similar in nature shall be prohibited,
25 as follows:

26 (1) Lifetime ban. A facility may not hire or engage an
27 applicant required to submit criminal history information
28 under this act if the department determines that the
29 applicant's criminal history record information indicates
30 that the applicant has been convicted of an offense or

1 attempt, solicitation or conspiracy to commit an offense
2 under one of the following provisions of 18 Pa.C.S. (relating
3 to crimes and offenses):

4 Chapter 25 (relating to criminal homicide).

5 Section 2718 (relating to strangulation).

6 Section 3011 (relating to trafficking in
7 individuals).

8 Section 3121 (relating to rape).

9 Section 3123 (relating to involuntary deviate sexual
10 intercourse).

11 Section 3124.2 (relating to institutional sexual
12 assault).

13 (2) Twenty-five year ban. Subject to subsection (c), a
14 facility may not hire or engage an applicant required to
15 submit criminal history information under this act for a
16 period of 25 years from the applicant's release or discharge
17 from a State or county correctional institution or from
18 termination of supervised probation or parole, whichever is
19 later, if the department determines that the applicant's
20 criminal history record information indicates the applicant
21 has been convicted of an offense or attempt, solicitation or
22 conspiracy to commit an offense under one of the following
23 provisions of 18 Pa.C.S.:

24 Chapter 26 (relating to crimes against unborn child).

25 Section 2702 (relating to aggravated assault).

26 Section 2713 (relating to neglect of care-dependent
27 person).

28 Section 2715 (relating to threat to use weapons of
29 mass destruction).

30 Section 2716 (relating to weapons of mass

1 destruction).

2 Section 2717 (relating to terrorism).

3 Section 2901 (relating to kidnapping).

4 Section 2903 (relating to false imprisonment).

5 Section 3122.1 (relating to statutory sexual

6 assault).

7 Section 3124.1 (relating to sexual assault).

8 Section 3125 (relating to aggravated indecent

9 assault).

10 Section 3126 (relating to indecent assault).

11 Section 3129 (relating to sexual intercourse with an

12 animal).

13 Section 3212 (relating to infanticide).

14 Section 4302 (relating to incest).

15 Section 4303 (relating to concealing death of child).

16 A felony offense under section 4304 (relating to

17 endangering welfare of children).

18 Section 4305 (relating to dealing in infant

19 children).

20 Section 5510 (relating to abuse of corpse).

21 Section 5903(a) (1), (3) (ii), (4) (ii), (5) (ii) or (6),

22 (c) or (d) (relating to obscene and other sexual

23 materials and performances).

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

25 Section 6318 (relating to unlawful contact with a

26 minor).

27 Section 6319 (relating to solicitation of minors to

28 traffic drugs).

29 Section 6320 (relating to the sexual exploitation of

30 children).

1 (3) Ten-year ban. Subject to subsection (f), a facility
2 may not hire or engage an applicant required to submit
3 criminal history information under this act for a period of
4 ten years from the applicant's release or discharge from a
5 State or county correctional institution or from termination
6 of supervised probation or parole, whichever is later, if the
7 department determines that the applicant's criminal history
8 record information indicates that the applicant has been
9 convicted of:

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

11 Two or more misdemeanors under section 2705 (relating
12 to recklessly endangering another person).

13 Section 2710 (relating to ethnic intimidation).

14 Section 2902 (relating to unlawful restraint).

15 A felony offense under section 2904 (relating to
16 interference with custody of children).

17 Section 2909 (relating to concealment of whereabouts
18 of a child).

19 Section 3127 (relating to indecent exposure).

20 Section 3131 (relating to unlawful dissemination of
21 intimate image).

22 Section 3133 (relating to sexual extortion).

23 Section 3301 (relating to arson and related
24 offenses).

25 Section 3502 (relating to burglary).

26 Section 3701 (relating to robbery).

27 Section 3702 (relating to robbery of motor vehicle).

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

30 Two or more misdemeanors under Chapter 39.

1 Section 4101 (relating to forgery).

2 Section 4103 (relating to fraudulent destruction,
3 removal or concealment of recordable instruments).

4 Section 4106 (relating to access device fraud).

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

7 Section 4115 (relating to falsely impersonating
8 persons privately employed).

9 Section 4120 (relating to identity theft).

10 A misdemeanor of the first degree under section 4304
11 (relating to endangering the welfare of a child).

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

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

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

18 Section 5902(b.1).

19 Section 6301 (relating to corruption of minors).

20 (4) 5-year ban. Subject to subsection (f), a facility
21 may not hire or engage an applicant required to submit
22 criminal history information under this act for a period of
23 five years from the applicant's release or discharge from a
24 State or county correctional institution or from termination
25 of supervised probation or parole, whichever is later, if the
26 department determines that the applicant's criminal history
27 record information indicates that the applicant has been
28 convicted of:

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

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

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

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

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

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

13 (iii) A misdemeanor of the first degree or a felony
14 under 18 Pa.C.S. § 4105 (relating to bad checks).

15 (iv) Convictions listed under subparagraph (i) shall
16 only be prohibited if the position the applicant is
17 applying for includes driving or transporting older
18 adults.

19 (f) Waiver request.--

20 (1) Unless prohibited by Federal law, the department may
21 grant a waiver of the prohibitions under subsection (e) when
22 the applicant submits a written waiver request.

23 (2) A facility shall provide the applicant with
24 information regarding the waiver process provided in this
25 subsection.

26 (3) The waiver request shall be submitted on a form
27 provided by the department and shall contain the following:

28 (i) The length of time since the individual's
29 conviction.

30 (ii) The nature and circumstances of the

1 individual's conviction.

2 (iii) If the individual was incarcerated, a copy of
3 the order from the Federal, State or local jurisdiction
4 that released the individual from incarceration,
5 including the date of release.

6 (iv) Evidence of the individual's rehabilitation.

7 (v) The nature of and requirements for the job.

8 (vi) The relationship of the offense to the
9 applicant's current or prospective job position.

10 (vii) A copy of any previously approved waiver
11 requests.

12 (viii) If available and applicable, a letter from a
13 probation or parole officer.

14 (ix) The type of facility.

15 (g) Waiver approval.--

16 (1) The department shall review and issue a decision on
17 approval or denial of the waiver request within 30 days.

18 (2) If the waiver request is denied, the response letter
19 from the department shall include information regarding the
20 appeal process.

21 (h) Applicability.--

22 (1) A waiver request granted under subsection (g)
23 applies only to the crimes and facilities types listed on the
24 waiver application.

25 (2) If granted, the waiver shall remain in place
26 indefinitely and be transferrable to the same or similar
27 position with an employer of an applicable facility type.

28 (3) The waiver shall not apply if the applicant attempts
29 to secure new employment for a substantially different
30 position at another facility or agency.

1 (4) The waiver shall not be applicable to any new
2 conviction that occurs after the waiver has been approved.

3 (i) Limitations.--

4 (1) The grant of a waiver request by the department does
5 not guarantee employment to the individual.

6 (2) If new criminal charges are filed against an
7 individual who has obtained a waiver from the department, the
8 individual must report the new criminal charges to both the
9 employer and the department within seven days of the charges
10 being filed.

11 (3) If the new conviction is banned under this act, the
12 employee must submit a new waiver request.

13 (j) Appeal rights.--If the department denies an individual's
14 request for a waiver, the individual shall have 20 days to
15 submit a written appeal to the Secretary of Aging as provided
16 under 6 Pa. Code Chs. 3 (relating to fair hearings and appeals)
17 and 21 (relating to domiciliary care services for adults).

18 (k) Duties and responsibilities of the department.--

19 (1) Within 60 days from the effective date of this
20 section, the department shall develop a waiver form to be
21 used by individuals seeking a waiver from the prohibitions
22 under subsection (e).

23 (2) Within 90 days from the effective date of this
24 section, the department shall develop a procedure for the
25 hearing of appeals resulting from department denials of
26 waiver request applications.

27 (l) Date of release or discharge.--To determine an
28 individual's release, discharge or termination of supervision,
29 the individual shall provide to the department, upon request,
30 documentation relating to the individual's release or discharge

1 from a State or county correctional institution or from
2 termination of supervised probation or parole.

3 (m) Employee disclosure.--

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

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

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

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

22 (3) Facilities shall require employees and
23 administrators to complete and submit the form on an annual
24 basis relating to any conviction that occurred during the
25 prior 12-month period. Employees and administrators shall
26 advise their employers with written notice utilizing the form
27 not later than 72 hours after a conviction.

28 (4) If an employee or administrator refuses to submit
29 the form, the facility shall immediately require the employee
30 to submit a current report of criminal history record

1 information as required under subsection (a).

2 (n) Penalties.--

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

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

10 (o) Provisional employees for limited periods.--

11 (1) Facilities may employ applicants on a provisional
12 basis for a single period not to exceed 90 days, if all of
13 the following conditions are met:

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

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

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

25 (2) If the information obtained from the criminal
26 history report reveals that the applicant is disqualified
27 from employment, the applicant shall be dismissed
28 immediately.

29 (3) The department shall develop guidelines, in
30 consultation with the Department of Health and the Department

1 of Human Services, regarding the supervision of applicants.
2 Supervision shall include random direct supervision by an
3 employee who has been employed by the facility for a period
4 of at least one year.

5 Section 12. Sections 504, 505, 506, 507, 508, 702, 703, 704,
6 705 and 706 of the act are repealed:

7 [Section 504. Regulations.

8 The department, in consultation with the Department of Health
9 and the Department of Public Welfare, shall promulgate the
10 regulations necessary to carry out this chapter.

11 Section 505. Violations.

12 (a) Administrative.--

13 (1) An administrator who intentionally or willfully
14 fails to comply or obstructs compliance with the provisions
15 of this chapter commits a violation of this chapter and shall
16 be subject to an administrative penalty under paragraph (3).

17 (2) A facility owner that intentionally or willfully
18 fails to comply with or obstructs compliance with this
19 chapter commits a violation of this chapter and shall be
20 subject to an administrative penalty under paragraph (3).

21 (3) The Commonwealth agency or Commonwealth agencies
22 which license the facility have jurisdiction to determine
23 violations of this chapter and may issue an order assessing a
24 civil penalty of not more than \$2,500. An order under this
25 paragraph is subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to
26 practice and procedure of Commonwealth agencies) and Ch. 7
27 Subch. A (relating to judicial review of Commonwealth agency
28 action).

29 (b) Criminal.--

30 (1) An administrator who intentionally or willfully

1 fails to comply or obstructs compliance with this chapter
2 commits a misdemeanor of the third degree and shall, upon
3 conviction, be sentenced to pay a fine of \$2,500 or to
4 imprisonment for not more than one year, or both.

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

10 Section 506. Provisional employees for limited periods.

11 Notwithstanding section 502, administrators may employ
12 applicants on a provisional basis for a single period not to
13 exceed 30 days or, for applicants under section 502(a)(2), a
14 period of 90 days, if all of the following conditions are met:

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

19 (2) The administrator has no knowledge of information
20 pertaining to the applicant which would disqualify him from
21 employment pursuant to section 503, subject to 18 Pa.C.S. §
22 4911 (relating to tampering with public records or
23 information).

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

26 (4) If the information obtained under section 502
27 reveals that the applicant is disqualified from employment
28 under section 503, the applicant shall be immediately
29 dismissed by the administrator.

30 (5) The department shall develop guidelines regarding

1 the supervision of applicants. For a home health care agency,
2 supervision shall include random direct supervision by an
3 employee who has been employed by the facility for a period
4 of one year.

5 Section 507. State Police.

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

12 Section 508. Applicability.

13 This chapter shall apply as follows:

14 (1) An individual who, on the effective date of this
15 chapter, has continuously for a period of one year been an
16 employee of the same facility shall be exempt from section
17 502 as a condition of continued employment.

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

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

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

29 Section 702. Reports to department and coroner.

30 (a) Department.--

1 (1) Within 48 hours of receipt of a written report under
2 section 701(a) involving sexual abuse, serious physical
3 injury, serious bodily injury or suspicious death, the agency
4 shall transmit a written report to the department.
5 Supplemental reports shall be transmitted as they are
6 obtained by the agency.

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

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

11 (ii) Where the suspected abuse occurred.

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

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

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

20 (vi) The source of the report.

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

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

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

28 (b) Coroner.--For a report under section 701(a) which
29 concerns the death of a recipient, if there is reasonable cause
30 to suspect that the recipient died as a result of abuse, the

1 agency shall give the oral report and forward a copy of the
2 written report to the appropriate coroner within 24 hours.

3 Section 703. Investigation.

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

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

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

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

23 (e) Compliance with Chapter 3.--In addition to the
24 provisions of this section, the agency shall comply with Chapter
25 3.

26 Section 704. Restrictions on employees.

27 (a) Plan of supervision.--Upon notification that an employee
28 is alleged to have committed abuse, the facility shall
29 immediately implement a plan of supervision or, where
30 appropriate, suspension of the employee, subject to approval by

1 the agency and by the Commonwealth agency with regulatory
2 authority over the facility. A plan of supervision for a home
3 health care agency must include periodic random direct
4 inspections of care-dependent individuals by a facility employee
5 who has been continuously employed by that facility for a period
6 of at least one year.

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

15 Section 705. Confidentiality of and access to confidential
16 reports.

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

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

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

24 (2) An employee of the Department of Health or the
25 Department of Public Welfare in the course of official
26 duties.

27 (3) An employee of an agency of another state which
28 performs protective services similar to those under this
29 chapter.

30 (4) A practitioner of the healing arts who is examining

1 or treating a recipient and who suspects that the recipient
2 is in need of protection under this chapter.

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

8 (6) A guardian of the recipient.

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

11 (8) The Attorney General.

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

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

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

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

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

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

29 (e) Protecting identity of person making report.--Except for
30 reports to law enforcement officials, the release of data that

1 would identify the individual who made a report under this
2 chapter or an individual who cooperated in a subsequent
3 investigation is prohibited. Law enforcement officials shall
4 treat all reporting sources as confidential information.

5 Section 706. Penalties.

6 (a) Administrative.--

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

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

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

28 (b) Criminal.--

29 (1) An administrator who intentionally or willfully
30 fails to comply or obstructs compliance with this chapter

1 commits a misdemeanor of the third degree and shall, upon
2 conviction, be sentenced to pay a fine of \$2,500 or to
3 imprisonment for not more than one year, or both.

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

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

14 Section 13. The act is amended by adding a section to read:
15 Section 706.1. Penalties.

16 (a) Civil penalties.--

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

29 (2) The Commonwealth agency or agencies which license a
30 facility shall determine violations of section 503.1 and may

1 issue an order assessing a civil penalty of not more than
2 \$5,000.

3 (b) Damages for retaliatory action.--

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

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

14 (c) Damages for intimidation.--

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

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

26 (d) Criminal penalties.--

27 (1) A mandatory reporter under this act who
28 intentionally fails to report suspected abuse, neglect,
29 exploitation or abandonment commits a summary offense for the
30 first violation and a misdemeanor of the second degree for a

1 second or subsequent violation and shall, upon conviction, be
2 sentenced to pay a fine of \$5,000, or imprisonment for not
3 more than one year, or both.

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

12 (e) Immunity.--

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

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

22 (3) Any company, institution and all affiliated entities
23 that employ a person required or permitted to make a report
24 under this act shall not be held civilly liable for any
25 action directly related to good faith compliance with this
26 act.

27 (f) Funds.--Funds collected under this act by the department
28 shall be dedicated for department programs to investigate and
29 prevent the abuse, neglect, exploitation and abandonment of
30 older adults.

1 Section 14. Section 707 of the act is repealed:

2 [Section 707. Immunity.

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

6 Section 15. The act is amended by adding sections to read:

7 Section 707.1. Immunity from civil and criminal liability.

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

15 Section 707.2. Funding.

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

18 Section 16. Section 708 of the act is amended to read:

19 Section 708. Regulations and annual report.

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

24 (b) Duty to report.--The department shall present to the
25 General Assembly annually a report on the program and services
26 performed, including any additional budgetary needs.

27 Section 17. This act shall take effect as follows:

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

30 (2) This section shall take effect immediately.

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