

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 950 Session of  
1997

INTRODUCED BY PICCOLA, GREENLEAF, O'PAKE, JUBELIRER, GERLACH,  
HART, HELFRICK, TOMLINSON, WILLIAMS, SALVATORE, WENGER,  
COSTA, MELLOW, BELL, DELP, FUMO, AFFLERBACH, HOLL, RHOADES,  
STOUT, MUSTO, KASUNIC, MURPHY AND THOMPSON, MAY 1, 1997

AS AMENDED ON SECOND CONSIDERATION, NOVEMBER 18, 1997

## AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania  
2 Consolidated Statutes, further providing for protection from  
3 abuse; ~~and~~ providing for appointing guardians for care- <—  
4 dependent persons; AND PROVIDING FOR RELEASE OF INFORMATION <—  
5 IN CONFIDENTIAL REPORTS.

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

8 Section 1. The definitions of "abuse" and "victim" in  
9 section 6102(a) of Title 23 of the Pennsylvania Consolidated  
10 Statutes are amended and the subsection is amended by adding  
11 definitions to read:

12 § 6102. Definitions.

13 (a) General rule.--The following words and phrases when used  
14 in this chapter shall have the meanings given to them in this  
15 section unless the context clearly indicates otherwise:

16 "Abuse." The occurrence of one or more of the following acts  
17 between family or household members, sexual or intimate partners  
18 [or], persons who share biological parenthood or the occurrence

1 of one or more of these acts by a person who is a caretaker to  
2 the victim, who is a care-dependent person:

3 (1) Attempting to cause or intentionally, knowingly or  
4 recklessly causing bodily injury, serious bodily injury,  
5 rape, involuntary deviate sexual intercourse, sexual assault,  
6 statutory sexual assault, aggravated indecent assault,  
7 indecent assault or incest with or without a deadly weapon.

8 (2) Placing another in reasonable fear of imminent  
9 serious bodily injury.

10 (3) The infliction of false imprisonment pursuant to 18  
11 Pa.C.S. § 2903 (relating to false imprisonment).

12 (4) Physically or sexually abusing minor children,  
13 including such terms as defined in Chapter 63 (relating to  
14 child protective services).

15 (5) Knowingly engaging in a course of conduct or  
16 repeatedly committing acts toward another person, including  
17 following the person, without proper authority, under  
18 circumstances which place the person in reasonable fear of  
19 bodily injury. The definition of this paragraph applies only  
20 to proceedings commenced under this title and is inapplicable  
21 to any criminal prosecutions commenced under Title 18  
22 (relating to crimes and offenses).

23 \* \* \*

24 "Agency." The local provider of protective services, which  
25 is the area agency on aging or the agency designated by the area  
26 agency on aging to provide protective services in the area  
27 agency's planning and service area as defined in the act of  
28 November 6, 1987 (P.L.381, No.79), known as the Older Adults  
29 Protective Services Act.

30 "Care-dependent person." Any adult 60 years of age or older

1 who, due to physical or cognitive disability or impairment,  
2 requires assistance to meet his needs for food, shelter,  
3 clothing, personal care or health care.

4 "Caretaker." Any person who:

5 (1) is an owner, operator, administrator, manager or  
6 employee of a nursing home, personal care home, domiciliary  
7 care home, community residential facility, adult daily living  
8 center, home health service provider or a facility, whether  
9 licensed or unlicensed, including any care or service that  
10 takes place in the care-dependent person's home;

11 (2) provides care to a care-dependent person in the  
12 setting described in paragraph (1); or

13 (3) has an obligation to care for a care-dependent  
14 person for monetary consideration in the settings described  
15 in paragraph (1).

16 \* \* \*

17 "Facility." Any of the following:

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

21 (2) A home health care agency.

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

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

28 (5) A personal care home as defined in section 1001 of  
29 the act of June 13, 1967 (P.L.31, No.21), known as the Public  
30 Welfare Code.

\* \* \*

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

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

(2) A public or private agency or organization, or part of an agency or organization, which provides care to a care-dependent person in the person's place of residence.

\* \* \*

"Protective services." Those activities, resources and supports provided to older adults under this act to detect, prevent, reduce or eliminate abuse, neglect, exploitation and abandonment under the act of November 6, 1987 (P.L.381, No.79), known as the Older Adults Protective Services Act.

\* \* \*

"Victim." A person who is physically or sexually abused by a family or household member, sexual or intimate partner or caretaker. For purposes of section 6116 (relating to confidentiality), a victim is a person against whom abuse is committed who consults a domestic violence counselor or advocate for the purpose of securing advice, counseling or assistance. The term shall also include persons who have a significant relationship with the victim and who seek advice, counseling or assistance from a domestic violence counselor or advocate regarding abuse of the victim.

\* \* \*

Section 2. Section 6106(a) of Title 23 is amended and the section is amended by adding subsections to read:

§ 6106. Commencement of proceedings.

(a) General rule.--An adult or an emancipated minor may seek relief under this chapter for that person or any parent, adult

1 household member or guardian ad litem may seek relief under this  
2 chapter on behalf of minor children, or a guardian of the person  
3 of an adult who has been declared incompetent under 20 Pa.C.S.  
4 Ch. 51 Subch. B (relating to appointment of guardian) may seek  
5 relief on behalf of the incompetent adult[,]. If, however, the  
6 defendant is a caretaker of the victim, who is a care-dependent  
7 person, any person acting in good faith and having reasonable  
8 cause to believe that the victim is being abused may, after  
9 reasonably attempting to consult with the victim and after  
10 notifying the agency, seek relief under this chapter. Relief  
11 under this chapter shall be sought by filing a petition with the  
12 court alleging abuse by the defendant. An employee of a  
13 caretaker who is seeking relief under this chapter, on behalf of  
14 the victim, who is a care-dependent person, shall also report  
15 the alleged abuse as required under the act of November 6, 1987  
16 (P.L.381, No.79), known as the Older Adults Protective Services  
17 Act.

18 \* \* \*

19 (a.2) Individual immunity.--A person who seeks relief under  
20 this chapter on the behalf of a victim, who is a care-dependent  
21 person, shall be immune from civil or criminal liability in  
22 connection with any action taken under this chapter unless the  
23 person acted in bad faith or with malicious purpose.

24 (a.3) Caretaker immunity.--A caretaker, who is not the  
25 defendant for which relief is being sought under this chapter,  
26 shall be immune from civil liability for any action directly  
27 related to good faith compliance with this chapter and any  
28 action required under the Older Adults Protective Services Act,  
29 unless the caretaker has acted in bad faith or with malicious  
30 purpose.

1       \* \* \*

2       (i) Appointment of attorney for care-dependent person.--

3           (1) When a person seeks relief under this chapter on  
4       behalf of a care-dependent person alleging abuse, the court  
5       may appoint an attorney for the care-dependent person for the  
6       duration of the proceedings, if the court finds it is in the  
7       best interests of the care-dependent person.

8           (2) The attorney appointed under this subsection shall  
9       be given access to all documents and reports relevant to the  
10       proceedings under this chapter and to any reports of  
11       examination of the care-dependent person. The attorney shall  
12       be charged with the representation of the best interests of  
13       the care-dependent person at every stage of the proceedings  
14       and, if necessary, shall make such further investigation to  
15       ascertain the facts, interview witnesses, examine and cross-  
16       examine witnesses, make recommendations to the court and  
17       participate further in the proceedings to the appropriate  
18       degree to adequately represent the care-dependent person. The  
19       attorney shall, when possible, ascertain the wishes of the  
20       care-dependent person concerning the proceedings and shall  
21       communicate the wishes to the court.

22           (3) The court shall give consideration to the petition  
23       of any attorney for the care-dependent person and, when  
24       deemed in the best interests of the care-dependent person:

25           (i) Order an agency to establish and implement,  
26       fully and promptly, appropriate services, treatment and  
27       plans for the care-dependent person found to be in need  
28       of them.

29           (ii) Terminate or alter the conditions of any  
30       temporary or permanent relief issued under this chapter.

1       SECTION 3.   SECTION 6340(A) INTRODUCTORY PARAGRAPH AND (5) OF   <—  
2   TITLE 23 ARE AMENDED TO READ:

3   § 6340.   RELEASE OF INFORMATION IN CONFIDENTIAL REPORTS.

4       (A)   GENERAL RULE.--REPORTS SPECIFIED IN SECTION 6339  
5   (RELATING TO CONFIDENTIALITY OF REPORTS), AND TESTIMONY BASED ON  
6   THE REPORTS OR ON THE INVESTIGATION UNDERLYING THEM, SHALL ONLY  
7   BE MADE AVAILABLE TO:

8           \* \* \*

9       (5)   A COURT OF COMPETENT JURISDICTION, INCLUDING A  
10   HEARING BEFORE A DISTRICT JUSTICE ON ALLEGED CRIMINAL CONDUCT  
11   WHICH MEETS THE DEFINITION OF CHILD ABUSE UNDER SECTION 6303  
12   (RELATING TO DEFINITIONS), PURSUANT TO A SUBPOENA OR SIMILAR  
13   COURT ORDER. DISCLOSURE THROUGH TESTIMONY SHALL BE SUBJECT TO  
14   THE RESTRICTIONS OF SUBSECTION (C).

15           \* \* \*

16   Section ~~3~~ 4.   This act shall take effect in 60 days.                   <—