

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 REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF  
REPRESENTATIVES, AS AMENDED, NOVEMBER 10, 1998

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania  
2 Consolidated Statutes, PROVIDING FOR VISITATION RIGHTS AND <—  
3 PARTIAL CUSTODY WHEN THERE IS A DECEASED PARENT; further  
4 providing for protection from abuse; providing for appointing  
5 guardians for care-dependent persons; and providing for <—  
6 release of information in confidential reports; AND FURTHER <—  
7 PROVIDING FOR INFORMATION RELATING TO PROSPECTIVE CHILD-CARE  
8 PERSONNEL.

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

11 ~~Section 1. The definitions of "abuse" and "victim" in~~ <—  
12 ~~section 6102(a) of Title 23 of the Pennsylvania Consolidated~~  
13 ~~Statutes are amended and the subsection is amended by adding~~  
14 ~~definitions to read:~~

15 SECTION 1. SECTION 5311 OF TITLE 23 OF THE PENNSYLVANIA <—  
16 CONSOLIDATED STATUTES IS AMENDED TO READ:

17 § 5311. WHEN PARENT DECEASED.

18 (A) PARENTS AND GRANDPARENTS.--IF A PARENT OF AN UNMARRIED

1 CHILD IS DECEASED, THE PARENTS OR GRANDPARENTS OF THE DECEASED  
2 PARENT MAY BE GRANTED REASONABLE PARTIAL CUSTODY OR VISITATION  
3 RIGHTS, OR BOTH, TO THE UNMARRIED CHILD BY THE COURT UPON A  
4 FINDING THAT PARTIAL CUSTODY OR VISITATION RIGHTS, OR BOTH,  
5 WOULD BE IN THE BEST INTEREST OF THE CHILD AND WOULD NOT  
6 INTERFERE WITH THE PARENT-CHILD RELATIONSHIP. THE COURT SHALL  
7 CONSIDER THE AMOUNT OF PERSONAL CONTACT BETWEEN THE PARENTS OR  
8 GRANDPARENTS OF THE DECEASED PARENT AND THE CHILD PRIOR TO THE  
9 APPLICATION.

10 (B) SIBLINGS.--IF A PARENT OF AN UNMARRIED CHILD IS THE  
11 VICTIM OF CRIMINAL HOMICIDE PERPETRATED BY THE OTHER PARENT, THE  
12 SIBLINGS OF THE DECEASED PARENT MAY BE GRANTED REASONABLE  
13 PARTIAL CUSTODY OR VISITATION RIGHTS, OR BOTH, TO THE UNMARRIED  
14 CHILD BY THE COURT UPON A FINDING THAT PARTIAL CUSTODY OR  
15 VISITATION RIGHTS, OR BOTH, WOULD BE IN THE BEST INTEREST OF THE  
16 CHILD AND WOULD NOT INTERFERE WITH THE PARENT-CHILD  
17 RELATIONSHIP. THE COURT SHALL CONSIDER THE AMOUNT OF PERSONAL  
18 CONTACT BETWEEN THE SIBLINGS OF THE DECEASED PARENT AND THE  
19 CHILD PRIOR TO THE APPLICATION.

20 SECTION 2. THE DEFINITION OF "ABUSE" IN SECTION 6102(A) OF  
21 TITLE 23 IS AMENDED AND THE SUBSECTION IS AMENDED BY ADDING  
22 DEFINITIONS TO READ:

23 § 6102. Definitions.

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

27 "Abuse." The occurrence of one or more of the following acts  
28 between family or household members, sexual or intimate partners  
29 [or], persons who share biological parenthood or the occurrence  
30 of one or more of these acts by a person who is a caretaker to

the victim, who is a care-dependent person:

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

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

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

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

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

\* \* \*

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

"Care-dependent person." Any adult 60 years of age or older who, due to physical or cognitive disability or impairment,

requires assistance to meet his needs for food, shelter,  
clothing, personal care or health care.

"Caretaker." Any person who:

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

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

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

\* \* \*

"Facility." Any of the following:

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

(2) A home health care agency.

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

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

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

\* \* \*

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

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

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

7 \* \* \*

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

13 \* \* \*

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

24 \* \* \*

25 Section 2 3. Section 6106(a) and (c) of Title 23 are amended <—  
26 and the section is amended by adding subsections to read:

27 § 6106. Commencement of proceedings.

28 (a) General rule.--An adult or an emancipated minor may seek  
29 relief under this chapter for that person or any parent, adult  
30 household member or guardian ad litem may seek relief under this

1 chapter on behalf of minor children, or a guardian of the person  
2 of an adult who has been declared incompetent under 20 Pa.C.S.  
3 Ch. 51 Subch. B (relating to appointment of guardian) may seek  
4 relief on behalf of the incompetent adult[,]. If, however, the  
5 defendant is a caretaker of the ~~victim~~ ABUSED, who is a care- <—  
6 dependent person, any person acting in good faith and having  
7 reasonable cause to believe that the ~~victim~~ CARE-DEPENDENT <—  
8 PERSON is being abused may, after reasonably attempting to  
9 consult with the ~~victim~~ CARE-DEPENDENT PERSON and after <—  
10 notifying the agency, seek relief under this chapter AND MAY <—  
11 SEEK RELIEF UNTIL THE CARE-DEPENDENT PERSON IS ABLE TO DO SO ON  
12 THAT PERSON'S OWN BEHALF OR BY REPRESENTATION. Relief under this  
13 chapter shall be sought by filing a petition with the court  
14 alleging abuse by the defendant. An employee of a caretaker who  
15 is seeking relief under this chapter, on behalf of the ~~victim,~~ <—  
16 ~~who is~~ a care-dependent person, shall also report the alleged  
17 abuse as required under the act of November 6, 1987 (P.L.381,  
18 No.79), known as the Older Adults Protective Services Act.

19 \* \* \*

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

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

1 purpose.

2 \* \* \*

3 (c) Assessment of fees and costs.--If the plaintiff prevails  
4 in the action, fees and costs, including attorney costs  
5 resulting from the appointment of counsel for care-dependent  
6 persons by a court of competent jurisdiction pursuant to  
7 subsection (i), shall be assigned to the defendant, or, should  
8 the court determine that the defendant is not able to pay the  
9 costs of filing and service, the court shall waive fees and  
10 costs. If the plaintiff does not prevail, costs of filing and  
11 service may be assigned to the plaintiff or, should the court  
12 determine that the plaintiff is not able to pay the costs of  
13 filing and service, the court shall waive fees and costs.

14 \* \* \*

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

16 (1) When a person seeks relief under this chapter on  
17 behalf of a care-dependent person alleging abuse, the court  
18 may appoint an attorney for TO REPRESENT the care-dependent <—  
19 person for the duration of the proceedings, if the court <—  
20 finds it is in the best interests of the care dependent  
21 person.

22 (2) The attorney appointed under this subsection shall  
23 be given access to all documents and reports relevant to the  
24 proceedings under this chapter and to any reports of  
25 examination of the care-dependent person. The attorney shall  
26 be charged with the representation of the best interests of <—  
27 the care-dependent person at every stage of the proceedings  
28 and, if necessary, shall make such further investigation to  
29 ascertain the facts, interview witnesses, examine and cross-  
30 examine witnesses, make recommendations to the court and

1 participate further in the proceedings to the appropriate  
2 degree to adequately represent the care-dependent person. The  
3 attorney shall, when possible, ascertain the wishes of the  
4 care-dependent person concerning the proceedings and shall  
5 communicate the wishes to the court.

6 (3) The court shall give consideration to the petition  
7 of any attorney for the care-dependent person and, when  
8 deemed in the best interests of the care dependent person <—

9 APPROPRIATE: <—

10 (i) Order an agency to establish and implement,  
11 fully and promptly, appropriate services, treatment and  
12 plans for the care-dependent person found to be in need  
13 of them.

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

16 Section 3. ~~Section 6340(a) introductory paragraph and (5) of~~ <—

17 4. SECTIONS 6340(A) INTRODUCTORY PARAGRAPH AND (5) AND 6344(H) <—  
18 OF Title 23 are amended to read:

19 § 6340. Release of information in confidential reports.

20 (a) General rule.--Reports specified in section 6339  
21 (relating to confidentiality of reports), and testimony based on  
22 the reports or on the investigation underlying them, shall only  
23 be made available to:

24 \* \* \*

25 (5) A court of competent jurisdiction, including a  
26 hearing before a district justice on alleged criminal conduct  
27 which meets the definition of child abuse under section 6303  
28 (relating to definitions), pursuant to a subpoena or similar  
29 court order. Disclosure through testimony shall be subject to  
30 the restrictions of subsection (c).



1           \* \* \*

2   § 6344.   INFORMATION RELATING TO PROSPECTIVE CHILD-CARE  
3           PERSONNEL.

4           \* \* \*

5   (H) FEES.--

6       (1)   THE DEPARTMENT MAY CHARGE A FEE NOT TO EXCEED \$10 IN  
7   ORDER TO CONDUCT THE CERTIFICATION AS REQUIRED IN SUBSECTION  
8   (B)(2).

9       (2)   NOTWITHSTANDING PARAGRAPH (1) OR 18 PA.C.S. §  
10   9121(B)(1), NO INDIVIDUAL WHO REQUESTS A REPORT OF CRIMINAL  
11   HISTORY RECORD INFORMATION OR CERTIFICATION FROM THE  
12   DEPARTMENT AS REQUIRED IN SUBSECTION (B)(2) SHALL BE CHARGED  
13   A FEE IF THE REQUEST IS MADE IN ORDER FOR THE INDIVIDUAL TO  
14   MAKE APPLICATION TO BECOME A VOLUNTEER WITH AN AFFILIATE OF  
15   ANY GROUP WHICH PRIMARILY WORKS WITH CHILDREN INCLUDING, BUT  
16   NOT LIMITED TO, BIG BROTHERS OF AMERICA, BIG SISTERS OF  
17   AMERICA, BOYS SCOUTS OF AMERICA, GIRL SCOUTS OF THE UNITED  
18   STATES OF AMERICA, A RELIGIOUS RELATED GROUP OR ORGANIZATION,  
19   YMCA, YWCA OR 4 H CLUB.

20           \* \* \*

21   Section 4 5.   This act shall take effect ~~in 60 days~~  
22   IMMEDIATELY.