

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILLNo. 132 Session of  
1997

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INTRODUCED BY VANCE, E. Z. TAYLOR, GRUPPO, BLAUM, SAYLOR, TIGUE,  
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ROBERTS, BAKER, HABAY, ORIE, BENNINGHOFF, EACHUS AND BROWN,  
JANUARY 29, 1997

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AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
FEBRUARY 11, 1997

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## AN ACT

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

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

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

15 Section 103. Definitions.

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

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

3 \* \* \*

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

8 "SERIOUS PHYSICAL INJURY." AN INJURY THAT:

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9 (1) CAUSES A PERSON SEVERE PAIN; OR

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

12 \* \* \*

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

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

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

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

26 \* \* \*

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

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

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

9 \* \* \*

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

12 \* \* \*

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

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

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

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

22 \* \* \*

23 Section 503. Grounds for denying employment.

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

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

2 Chapter 25 (relating to criminal homicide).

3           Section 3121 (relating to rape).

4           Section 3122.1 (relating to statutory sexual assault).

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

7           Section 3124.1 (relating to sexual assault).

8           Section 3125 (relating to aggravated indecent assault).

9           Section 3126 (relating to indecent assault).

10           Section 4302 (relating to incest).

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

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

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

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

24 Chapter 25 (relating to criminal homicide) except <—

25           for section 2502(a) and (b).†

←

26           Section 2702 (relating to aggravated assault).

27                   Section 2901 (relating to kidnapping).

28           Section 2902 (relating to unlawful restraint).

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

Section 3502 (relating to burglary).

Section 3701 (relating to robbery).

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

Section 4101 (relating to forgery).

Section 4304 (relating to endangering welfare of children).

Section 4305 (relating to dealing in infant children).

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

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

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

Section 6301 (relating to corruption of minors).]

<—

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

<—

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

CHAPTER 25 (RELATING TO CRIMINAL HOMICIDE).

SECTION 2702 (RELATING TO AGGRAVATED ASSAULT).

SECTION 2901 (RELATING TO KIDNAPPING).

SECTION 2902 (RELATING TO UNLAWFUL RESTRAINT).

SECTION 3121 (RELATING TO RAPE).

SECTION 3122.1 (RELATING TO STATUTORY SEXUAL ASSAULT).

SECTION 3123 (RELATING TO INVOLUNTARY DEVIATE SEXUAL

1 INTERCOURSE).

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

4 SECTION 3126 (RELATING TO INDECENT ASSAULT).

5 SECTION 3127 (RELATING TO INDECENT EXPOSURE).

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

8 SECTION 3502 (RELATING TO BURGLARY).

9 SECTION 3701 (RELATING TO ROBBERY).

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

13 SECTION 4101 (RELATING TO FORGERY).

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

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

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

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

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

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

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

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

29 SECTION 6301 (RELATING TO CORRUPTION OF MINORS).

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

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

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

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

#### CHAPTER 7

#### REPORTING SUSPECTED ABUSE BY EMPLOYEES

#### Section 701. Reporting by employees.

##### (a) Mandatory reporting to agency.--

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

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

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

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

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

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

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

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

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

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

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

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

19 (3) Name and address of the facility.

20 (4) Nature of the alleged offense.

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

24 Section 702. Reports to department and coroner.

25 (a) Department.--

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



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

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

5             (ii) Where the suspected abuse occurred.

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

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

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

14            (vi) The source of the report.

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

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

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

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

27       Section 703. Investigation.

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

1 be filed.

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

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

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

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

19 Section 704. Restrictions on employees.

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

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

against an employee, the Commonwealth agency which licenses the facility shall order the facility to immediately prohibit that employee from having access to recipients at the facility. If that employee is a director, operator, administrator or supervisor, that employee shall be subject to restrictions deemed appropriate by the Commonwealth agency which licenses the facility to assure the safety of recipients of the facility.

Section 705. Confidentiality of and access to confidential reports.

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

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

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

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

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

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

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

1           (6) A guardian of the recipient.

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

4           (8) The Attorney General.

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

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

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

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

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

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

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

28          Section 706. Penalties.

29          (a) Administrative.--

30           (1) An administrator who intentionally or willfully

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

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

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

21 (b) Criminal.--

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

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

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

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

7     SECTION 707. REGULATIONS.

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

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