

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1930 Session of 2019

INTRODUCED BY HENNESSEY, SCHLEGEL CULVER, MILLARD, MURT, RYAN, McNEILL, PICKETT, STEPHENS, B. MILLER, READSHAW, WARREN, POLINCHOCK, DeLUCA, STAATS, JAMES, MENTZER, WHEELAND, MULLINS AND ROTHMAN, OCTOBER 15, 2019

REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES, OCTOBER 15, 2019

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," making extensive amendments; and adding
 8 provisions relating to preliminary provisions,
 9 administration, criminal history for employees, reporting
 10 suspected abuse by employees and miscellaneous provisions.

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

13 Section 1. Sections 102, 103 and 301 of the act of November
 14 6, 1987 (P.L.381, No.79), known as the Older Adults Protective
 15 Services Act, are amended to read:

16 Section 102. Legislative [policy] intent.

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

19 (1) It is the policy of the Commonwealth that older
 20 adults who lack the capacity to protect themselves and are at

1 imminent risk of abuse, neglect, exploitation or abandonment
2 shall have access to and be provided with services necessary
3 to protect their health, safety and welfare.

4 (2) It is not the purpose of this act to place
5 restrictions upon the personal liberty of [incapacitated]
6 older adults, but this act should be liberally construed to
7 assure the availability of protective services to all older
8 adults in need of them.

9 (3) Such services shall safeguard the rights of
10 [incapacitated] older adults while protecting them from
11 abuse, neglect, exploitation and abandonment. [It is the
12 intent of the General Assembly]

13 (4) The General Assembly intends to provide for the
14 detection and reduction, correction or elimination of abuse,
15 neglect, exploitation and abandonment[,] and to establish a
16 program of protective services for older adults in need of
17 them.

18 (5) It is the policy of the Commonwealth that
19 convictions for certain offenses that evidence a reckless
20 disregard for the vulnerability of care-dependent
21 populations, certain offenses involving misappropriation or
22 misuse of property or convictions that involve inappropriate
23 or irresponsible behavior may legitimately warrant time-
24 limited bans on employment working with older adults under
25 this act.

26 Section 103. Definitions.

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

30 "Abandonment." The desertion of an older adult by a

1 caretaker.

2 "Abuse." The occurrence of one or more of the following
3 acts:

4 (1) The infliction of injury, unreasonable confinement,
5 intimidation or punishment with resulting physical harm, pain
6 or mental anguish.

7 (2) The willful deprivation by a caretaker of goods or
8 services which are necessary to maintain physical or mental
9 health.

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

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

17 (3) Sexual abuse, including:

18 (i) rape;

19 (ii) involuntary deviate sexual intercourse;

20 (iii) sexual assault;

21 (iv) aggravated indecent assault;

22 (v) indecent assault; and

23 (vi) incest.

24 (4) Sexual harassment, including:

25 (i) unwelcome sexual advances;

26 (ii) requests for sexual favors; and

27 (iii) other unwelcome verbal or physical conduct of
28 a sexual nature.

29 "Administrator." The person responsible for the
30 [administration] management of a facility. The term includes a

1 person responsible for employment decisions or an independent
2 contractor responsible for administration of a facility.

3 ["Agency." The local provider of protective services, which
4 is the area agency on aging or the agency designated by the area
5 agency on aging to provide protective services in the area
6 agency's planning and service area.]

7 "Agent." A person authorized to act on behalf of an older
8 adult, including a person acting pursuant to a power of
9 attorney.

10 "Applicant." An individual who submits an application to be
11 considered for employment.

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

15 "Assessment." The evaluation of an older adult's social,
16 physical and psychological well-being, along with a description
17 of the older adult's current resources and needs using
18 instruments and procedures established by the department.

19 "Care." Services provided to meet [a person's] an older
20 adult's need for personal care or health care[. Services may
21 include homemaker services, assistance with activities of daily
22 living, physical therapy, occupational therapy, speech therapy,
23 medical social services, home-care aide services, companion-care
24 services, private duty nursing services, respiratory therapy,
25 intravenous therapy, in-home dialysis and durable medical
26 equipment services, which are routinely provided unsupervised
27 and which require interaction with the care-dependent person.
28 The term does not include durable medical equipment delivery.]
29 which requires interaction with the older adult.

30 "Care-dependent individual." An adult who, due to physical

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

4 "Caretaker." [An individual or institution that has assumed
5 the responsibility for the provision of care needed to maintain
6 the physical or mental health of an older adult. This
7 responsibility may arise voluntarily, by contract, by receipt of
8 payment for care, as a result of family relationship, or by
9 order of a court of competent jurisdiction. It is not the intent
10 of this act to impose responsibility on any individual if such
11 responsibility would not otherwise exist in law.]

12 "Client assessment." Social, physical and psychological
13 findings along with a description of the person's current
14 resources and needs.

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

17 (1) is an owner, operator, manager or employee of any of
18 the following licensed or unlicensed entities:

19 (i) a nursing home, personal care home, assisted
20 living facility, private care residence or domiciliary
21 care home;

22 (ii) a community residential facility or
23 intermediate care facility for a person with mental
24 disabilities;

25 (iii) an adult daily living center;

26 (iv) a home health service provider; or

27 (v) a health care facility as defined in section
28 802.1 of the act of July 19, 1979 (P.L.130, No.48), known
29 as the Health Care Facilities Act.

30 (2) provides care to an older adult in the settings

1 described under paragraph (1);

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

5 (4) is an adult who resides with an older adult and who
6 has a legal duty to provide care or who has voluntarily
7 assumed an obligation to provide care because of a familial
8 relationship, contract or court order; or

9 (5) is an adult who does not reside with an older adult
10 but who has a legal duty to provide care or who has
11 affirmatively assumed a responsibility for care or who has
12 responsibility by contract or court order.

13 "Case record." The complete record of the information
14 received and the actions taken by the area agency on aging on
15 each report of need.

16 "Consent." Authorization or approval that, where feasible,
17 is obtained in writing.

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

19 "Employee." An individual who [is employed by a facility.
20 The term includes contract employees who have direct contact
21 with residents or unsupervised access to their personal living
22 quarters. The term includes any person who is employed or who
23 enters into a contractual relationship to provide care to a
24 care-dependent individual for monetary consideration in the
25 individual's place of residence.]:

26 (1) is employed by a facility, or the affiliated
27 corporate entity of a facility, or enters into a contractual
28 relationship with a facility, an older adult, an older
29 adult's family, agent, legal representative or the affiliated
30 corporate entity of a facility, to provide care to an older

1 adult;

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

5 (3) is a student doing an internship or clinical
6 rotation or any other individual who has been granted access
7 to a facility or older adult to perform a clinical service
8 for a fee.

9 "Exploitation." An act or course of conduct by a caretaker
10 or other person against an older adult or an older adult's
11 resources, without the informed consent or authorization of the
12 older adult or with consent or authorization obtained through
13 misrepresentation, coercion or threats of force, [that results]
14 resulting in monetary, personal or other benefit, gain or profit
15 for [the perpetrator] that caretaker or person, or monetary or
16 personal loss to the older adult.

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.] Any of the
25 following entities as defined in section 802.1 of the Health
26 Care Facilities Act:

27 (i) A home health care agency.

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

29 (iii) A hospice.

30 (iv) A home care agency.

1 (v) A home care registry.

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

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

8 (6) An assisted living residence as defined in section
9 1001 of the Human Services Code.

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

12 (8) Any other public or private organization, or entity
13 or part of an organization or entity, that uses public funds
14 and is paid, in part, to provide care to care-dependent
15 individuals.

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

19 "Financial exploitation." The wrongful or unauthorized
20 taking or attempt to take by withholding, appropriation,
21 concealment or use of money, assets or property of an older
22 adult, including any act or omission taken by a person,
23 including through the use of a power of attorney, guardianship,
24 custodian, trustee, personal representative or conservatorship
25 of an older adult or by an individual who stands in a position
26 of trust and confidence with the older adult, including business
27 transactions to:

28 (1) obtain or attempt to obtain control, through
29 deception, intimidation or undue influence, over the older
30 adult's money, assets or property to deprive the older adult

1 of the ownership, use, benefit or possession of the older
2 adult's money, assets or property; or

3 (2) convert or attempt to convert money, assets or
4 property of the older adult to deprive the older adult of the
5 ownership, use, benefit or possession of the older adult's
6 money, assets or property.

7 "Financial institution." Any of the following:

8 (1) An insured bank as defined in section 3(h) of the
9 Federal Deposit Insurance Act (64 Stat. 873, 12 U.S.C. §
10 1813(h)).

11 (2) A commercial bank or trust company.

12 (3) A private banker.

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

15 (5) Any credit union.

16 (6) A thrift institution.

17 (7) A broker or dealer registered with the Securities
18 and Exchange Commission under the Securities Exchange Act of
19 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.).

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

21 (9) An investment banker or investment company.

22 (10) A currency exchange.

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

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

26 (13) A loan or finance company.

27 (14) A licensed sender of money or any other person who
28 engages as a business in the transmission of funds, including
29 any person who engages as a business in an informal money
30 transfer system or any network of people who engage as a

1 business in facilitating the transfer of money domestically
2 or internationally outside of the conventional financial
3 institutions system.

4 (15) A person required to be registered as an investment
5 adviser by the Investment Advisers Act of 1940 (54 Stat. 847,
6 15 U.S.C. § 80b-1 et seq.) or under the laws of this
7 Commonwealth.

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

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

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

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

18 "Incapacitated person." An adult whose ability to receive or
19 evaluate information effectively or communicate decisions in any
20 way is impaired to such a significant extent that the adult is
21 partially or totally unable to manage the adult's financial
22 resources or to meet essential requirements for the adult's
23 physical health and safety.

24 "Intimidation." An act or omission by any person or entity
25 toward another person [which is intended to, or with knowledge
26 that the act or omission will, obstruct, impede, impair, prevent
27 or interfere] that obstructs, impedes, impairs, prevents or
28 interferes with the administration of this act or any other law
29 intended to protect older adults from mistreatment.

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

- 1 (1) A police officer of a municipality.
2 (2) A district attorney.
3 (3) The Pennsylvania State Police.
4 (4) A county sheriff.
5 (5) The Attorney General of the Commonwealth.
6 (6) The United States Department of Justice and other
7 Federal law enforcement agencies.

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

9 "Mandatory reporter." Any of the following:

- 10 (1) A facility employee or administrator.
11 (2) A health care provider that is:
12 (i) a licensed hospital or health care facility; or
13 (ii) an individual licensed, certified or otherwise
14 regulated to provide health care services under the laws
15 of this Commonwealth, including a physician, podiatrist,
16 optometrist, psychologist, psychiatrist, physical
17 therapist, certified nurse practitioner, registered
18 nurse, nurse midwife, physician's assistant,
19 chiropractor, dentist, pharmacist or any other individual
20 accredited or certified to provide behavioral health
21 services.
22 (3) Coroner.

23 "Neglect." The failure to provide for oneself or the failure
24 of a caretaker to provide goods or services essential to avoid a
25 clear and serious threat to physical or mental health. No older
26 adult who does not consent to the provision of protective
27 services shall be found to be neglected solely on the grounds of
28 environmental factors which are beyond the control of the older
29 adult or the caretaker, such as inadequate housing, furnishings,
30 income, clothing or medical care.

1 "Older adult." [A person] An individual within the
2 jurisdiction of [the] this Commonwealth who is 60 years of age
3 or older.

4 "Older adult in need of protective services." An
5 incapacitated older adult who is unable to perform or obtain
6 services that are necessary to maintain physical or mental
7 health, for whom there is no responsible caretaker and who is at
8 imminent risk of danger to his person or property.

9 "Protective services." Those activities, resources and
10 supports provided to older adults under this act to detect,
11 prevent, reduce or eliminate abuse, neglect, exploitation and
12 abandonment.

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

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

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

19 ["Serious bodily injury." Injury which creates a substantial
20 risk of death or which causes serious permanent disfigurement or
21 protracted loss or impairment of the function of a body member
22 or organ.]

23 "Serious physical injury." An injury that:

- 24 (1) causes a person severe pain; or
25 (2) significantly impairs a person's physical
26 functioning, either temporarily or permanently.]

27 "Serious bodily injury." Injury that:

- 28 (1) creates a substantial risk of death; or
29 (2) causes serious permanent disfigurement or protracted
30 loss or impairment of the function of a body member or organ.

1 The term does not include an isolated accidental injury self-
2 inflicted by the older adult.

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

4 (1) Developed by the [agency] area agency on aging on
5 the basis of comprehensive assessment of [a client's need
6 which describes identified needs, goals to be achieved and
7 specific services to support goal attainment, with regular
8 follow-up and predetermined reassessment of client progress.
9 Specific services to support goal attainment may include, but
10 is not limited to, homemaker services, home-delivered meals,
11 attendant care, other in-home services, emergency shelter or
12 food, legal aid services, transportation and other such
13 services. Service plans are cooperatively developed by the
14 agency staff, the client or the client's appointed guardian,
15 and other family members when appropriate. The plan shall
16 also address, where applicable, special needs of other
17 members of the household unit as they may affect the older
18 adult's need for protective services.]

19 "Sexual abuse." Intentionally, knowingly or recklessly
20 causing or attempting to cause rape, involuntary deviate sexual
21 intercourse, sexual assault, statutory sexual assault,
22 aggravated indecent assault, indecent assault or incest.] an
23 older adult that describes identified needs and specific
24 services designed to support goal attainment.

25 (2) That includes regular follow-up and predetermined
26 reassessment of progress.

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

29 (i) Homemaker services.

30 (ii) Home-delivered meals.

- 1 (iii) Personal care.
- 2 (iv) Other in-home services.
- 3 (v) Emergency shelter or food.
- 4 (vi) Legal aid services.
- 5 (vii) Transportation.
- 6 (viii) Victim services or counseling.
- 7 (ix) Other such services.

8 (4) Cooperatively developed by the area agency on aging
9 staff, the older adult or his legal representative, and other
10 family members, and staff from the facility, when
11 appropriate.

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

15 "Suspicious death." A death that is unexpected with
16 unexplained circumstances or cause.

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

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

19 The department shall conduct an ongoing public awareness
20 campaign designed to inform and educate older adults,
21 professionals and the general public about the need for [an] and
22 the availability of protective services under this chapter. The
23 department shall consult with other [departments of the
24 Commonwealth] State agencies on the design and implementation of
25 the ongoing public awareness campaign. The department shall also
26 consider the concerns of area agencies on aging and the entities
27 identified by them under subsection (c).

28 (b) Staff training.--

29 (1) The department shall establish minimum standards of
30 training and experience [which] that protective services

1 providers funded by the department shall be required to
2 follow in the selection and assignment of staff for the
3 provision of protective services.

4 (2) The department shall establish a training program
5 for mandatory reporters about the requirement to report under
6 this act.

7 (c) Protective services plans.--

8 (1) Each area agency on aging shall include a protective
9 services plan as part of its annual plan. The plan shall
10 describe the local implementation of this [chapter] act,
11 including the organization, staffing, mode of operations and
12 financing of protective services, as well as the provisions
13 made for purchase of services, interagency relations,
14 interagency agreements, service referral mechanisms and locus
15 of responsibility for cases with multiservice agency needs.

16 (2) The [description of] department shall establish the
17 methods that will be used by the [agency] AAA, its designees
18 and its service providers to assure the privacy of older
19 adults receiving services and the confidentiality of all
20 records [shall be established by the department]. The
21 department shall establish a schedule for the submission and
22 approval of the plans.

23 (3) The [plan shall include] area agency on aging shall
24 include in the plan, a list of all entities, whether public
25 or private, that have been identified by the [area agency on
26 aging] AAA as having substantial contact with potential
27 victims or alleged perpetrators of abuse, neglect,
28 exploitation and abandonment. [This list shall be submitted]
29 The area agency on aging shall submit this list to the
30 department for purposes of the public information campaign

1 under subsection (a).

2 Section 2. The act is amended by adding a section to read:

3 Section 301.1. Duties of financial institutions and
4 fiduciaries.

5 (a) Training.--A financial institution with employees in
6 this Commonwealth, or with employees regularly engaging in
7 financial transactions with, or on behalf of, older adults in
8 this Commonwealth, shall adopt and implement a training program
9 for its employees to:

10 (1) Identify activities that constitute the financial
11 exploitation of older adults.

12 (2) Recognize signs of potential financial exploitation
13 of older adults.

14 (3) Prevent and deter the financial exploitation of
15 older adults.

16 (4) Respond to suspected cases of financial exploitation
17 of older adults.

18 (b) Model training program.--The department, in cooperation
19 with the Department of Banking and Securities and
20 representatives of the financial services industry in this
21 Commonwealth, shall establish a model training program that may
22 be used to satisfy the requirements of subsection (a). A
23 national organization's training program may be adopted as the
24 model program if the training is certified or accredited.

25 (c) Regulated financial institutions.--A financial
26 institution subject to visitorial examination by a regulatory
27 authority that incorporates the training activities required by
28 subsection (a) into the financial institution's employee
29 training program to control fraud and money laundering that is
30 subject to examination by the regulatory authority shall be

1 deemed to be in compliance with subsection (a).

2 (d) Authority to prohibit disbursement of funds and
3 transactions.--

4 (1) If a financial institution or fiduciary reasonably
5 believes after initiating an internal review that a requested
6 disbursement or transaction may result in the financial
7 exploitation of an older adult, the financial institution or
8 fiduciary may, but is not required to, refuse to make the
9 disbursement or engage in the transaction, as appropriate, to
10 prevent financial exploitation of the older adult with
11 respect to the account:

12 (i) of the older adult;

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

15 (iii) of a person suspected of perpetrating
16 financial exploitation of an older adult.

17 (2) A financial institution or fiduciary may, but is not
18 required to, refuse to disburse funds or engage in a
19 transaction under this section if an area agency on aging or
20 law enforcement official requests the financial institution
21 or fiduciary to do so in writing or provides information in
22 writing to the financial institution or fiduciary
23 demonstrating that it is reasonable to believe that financial
24 exploitation of an older adult may have occurred, may have
25 been attempted or is being attempted.

26 (3) A financial institution or fiduciary is not required
27 to refuse to disburse funds or engage in a transaction when
28 provided with information alleging that financial
29 exploitation of an older adult may have occurred, may have
30 been attempted or is being attempted and may use the

1 financial institution's or fiduciary's discretion to
2 determine whether or not to refuse to disburse funds based on
3 the information available to the financial institution or
4 fiduciary.

5 (4) Except as prohibited by Federal or State law, a
6 financial institution or fiduciary that refuses to disburse
7 funds or engage in a transaction based on a reasonable belief
8 that financial exploitation of an older adult may have
9 occurred, may have been attempted or is being attempted
10 shall:

11 (i) Make a reasonable effort to notify all persons
12 authorized to transact business on the account or that
13 are beneficiaries of the account affected by the refusal
14 to make the disbursement or engage in the transaction,
15 orally or in writing, except for any person reasonably
16 believed to have engaged in the suspected or attempted
17 financial exploitation of the older adult.

18 (ii) Report the incident to the area agency on aging
19 or law enforcement officials.

20 (5) A notification provided under paragraph (4) (i) is
21 sufficient if the notice states that a financial institution
22 or fiduciary has temporarily blocked the disbursement of
23 funds or delayed the execution of transactions as authorized
24 by this subsection and identifies the name of the financial
25 institution or fiduciary and any account or transactions to
26 which the notification applies and provides a name and
27 telephone number of a contact person representing the
28 financial institution or fiduciary or the area agency on
29 aging or law enforcement agency to which a report has been
30 provided under paragraph (4) (ii).

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

7 (i) fifteen business days after the date on which
8 the financial institution or fiduciary first refused to
9 disburse the funds or engage in a transaction, unless
10 sooner terminated or extended by an order of a court of
11 competent jurisdiction, or upon a request made by a law
12 enforcement official, the department or an area agency on
13 aging. An additional 25 business days shall be permitted,
14 if requested by a law enforcement official, the
15 department or an area agency on aging or following the
16 submission of an application for a court order further
17 extending the time period; or

18 (ii) except as provided by paragraph (i), the time
19 when the financial institution or fiduciary is satisfied
20 that the disbursement will not result in financial harm
21 to the older adult. A request provided by subparagraph
22 (i) shall be documented in writing.

23 (7) A court of competent jurisdiction may enter an order
24 extending the refusal by the financial institution or
25 fiduciary to disburse funds based on a reasonable belief that
26 financial exploitation of an older adult may have occurred,
27 may have been attempted or is being attempted. A court of
28 competent jurisdiction may also order other protective relief
29 as authorized.

30 (e) Immunity.--Except as provided by subsection (g), a

1 financial institution or fiduciary and its directors, officers,
2 employees or agents shall not be subject to a claim for damages
3 or other civil or criminal liability for:

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

6 (2) A decision to make a report or not make a report
7 under subsection (a).

8 (3) A refusal to disburse funds or engage in a
9 transaction under subsection (c) or a decision to allow the
10 disbursement of funds or the conduct of transactions under
11 subsection (c).

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

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

17 (1) The refusal by a financial institution to engage in
18 a transaction as authorized under this subsection shall not
19 constitute the wrongful dishonor of an item under 13 Pa.C.S.
20 § 4402 (relating to liability of bank to customer for
21 wrongful dishonor; time of determining insufficiency of
22 account).

23 (2) A reasonable belief that payment of a check will
24 facilitate the financial exploitation of an older adult shall
25 constitute reasonable grounds to doubt the collectability of
26 the item for purposes of the Expedited Funds Availability Act
27 (Public Law 100-86, 12 U.S.C. § 4001 et seq.), the Check
28 Clearing for the 21st Century Act (Public Law 108-100, 12
29 U.S.C. § 5001 et seq.) and 12 C.F.R. Pt. 229 (relating to
30 availability of funds and collection of checks (regulation

1 cc)).

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

7 (h) Suspicious activity reports.--

8 (1) The department shall use its best efforts to enter
9 into a cooperative agreement with the United States
10 Department of the Treasury to receive or access suspicious
11 activity reports filed by financial institutions with the
12 United States Department of the Treasury.

13 (2) Except as prohibited by Federal law, any other
14 Commonwealth agency that receives or is granted access to
15 such reports from the United States Department of the
16 Treasury shall make the reports or access to the reports
17 available to the department in order to facilitate the
18 discharge of the department's duties under this act.

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

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

21 (a) [Reporting] Voluntary reports.--Any person, including an
22 employee of a financial institution or fiduciary, having
23 reasonable cause to [believe] suspect that an older adult [is in
24 need of protective services] may be a victim of abuse, neglect,
25 exploitation or abandonment may report such information to the
26 [agency which is the local provider of protective services.
27 Where applicable, reports shall comply with the provisions of
28 Chapter 7.

29 (b) Receiving reports.--The agency shall be capable of
30 receiving reports of older adults in need of protective services

1 24 hours a day, seven days a week (including holidays). This
2 capability may include the use of a local emergency response
3 system or a crisis intervention agency, provided that access can
4 be made to a protective services caseworker in appropriate
5 emergency situations as set forth in regulations promulgated by
6 the department. All reports received orally under this section
7 shall be reduced to writing immediately by the person who
8 receives the report.

9 (c) Retaliatory action; penalty.--Any person making a report
10 or cooperating with the agency, including providing testimony in
11 any administrative or judicial proceeding, and the victim shall
12 be free from any discriminatory, retaliatory or disciplinary
13 action by an employer or by any other person or entity. Any
14 person who violates this subsection is subject to a civil
15 lawsuit by the reporter or the victim wherein the reporter or
16 victim shall recover treble compensatory damages, compensatory
17 and punitive damages or \$5,000, whichever is greater.

18 (c.1) Intimidation; penalty.--Any person, including the
19 victim, with knowledge sufficient to justify making a report or
20 cooperating with the agency, including possibly providing
21 testimony in any administrative or judicial proceeding, shall be
22 free from any intimidation by an employer or by any other person
23 or entity. Any person who violates this subsection is subject to
24 civil lawsuit by the person intimidated or the victim wherein
25 the person intimidated or the victim shall recover treble
26 compensatory damages, compensatory and punitive damages or
27 \$5,000, whichever is greater.

28 (d) Immunity.--Any person participating in the making of a
29 report or who provides testimony in any administrative or
30 judicial proceeding arising out of a report shall be immune from

1 any civil or criminal liability on account of the report or
2 testimony unless the person acted in bad faith or with malicious
3 purpose. This immunity shall not extend to liability for acts of
4 abuse, neglect, exploitation or abandonment, even if such acts
5 are the subject of the report or testimony.] area agency on
6 aging.

7 (e) Mandatory reports.--

8 (1) A mandatory reporter, who has reasonable cause to
9 suspect that an older adult may be a victim of abuse,
10 neglect, exploitation or abandonment shall immediately make
11 an oral report to the area agency on aging. If applicable,
12 the AAA shall advise the mandatory reporter of additional
13 reporting requirements that may pertain under paragraph (2).
14 Within 48 hours of making the oral report, the mandatory
15 reporter shall make a written report to the AAA.

16 (2) A mandatory reporter who has reasonable cause to
17 suspect that an older adult may be a victim of suspicious
18 death, serious bodily injury or sexual abuse shall, in
19 addition to any duty imposed under paragraph (1), immediately
20 contact law enforcement officials and the department to make
21 an oral report. Within 48 hours of making the oral report,
22 the mandatory reporter shall make a written report to
23 appropriate law enforcement officials and to the area agency
24 on aging. The AAA shall forward the report to the department
25 within 48 hours of receipt.

26 (3) A written mandatory report under this subsection
27 shall be in a manner and on forms prescribed by the
28 department. At a minimum, the report shall include the
29 following information, as well as any additional information
30 required by regulation:

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

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

4 (iii) Name and address of the facility, if
5 applicable.

6 (iv) Nature and location of the reported incident
7 and any specific comments or observations that are
8 directly related to the alleged incident and the older
9 adult involved.

10 (v) Any relevant information known related to the
11 identity of the alleged perpetrator, including, but not
12 limited to, name, age, sex and relationship to the older
13 adult.

14 (vi) Name of the individual making the report,
15 contact information for the reporter and information
16 regarding any actions taken by the reporter in response
17 to the incident.

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

21 (f) Coroner.--For a report under subsection (a) or (b) that
22 concerns the death of an older adult, if there is reasonable
23 cause to suspect that the older adult died as a result of abuse,
24 neglect, exploitation or abandonment, the area agency on aging
25 shall give the oral report and forward a copy of the written
26 report to the appropriate coroner within 24 hours.

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

28 [**Section 303. Investigations of reports of need for protective**
29 **services.**]

30 **(a) Investigation.--It shall be the agency's responsibility**

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

10 (b) Investigation involving licensed facilities.--Any report
11 concerning older adults residing in a State-licensed facility
12 shall be investigated under procedures developed by the
13 department in consultation with the State agency licensing such
14 facility. If the report concerns a resident of a State-licensed
15 facility for whom the area agency on aging provides ombudsman
16 services, the ombudsman of the area agency on aging must be
17 notified.

18 (c) Unsubstantiated reports.--If, after investigation by the
19 agency, the report is unsubstantiated, the case shall be closed
20 and all information identifying the reporter and the alleged
21 abuser shall be immediately deleted from all records. For
22 purposes of substantiating a pattern of abuse, neglect,
23 exploitation or abandonment, the name of the alleged victim and
24 any information describing the alleged act of abuse, neglect,
25 exploitation or abandonment may be maintained for a period of
26 six months under procedures established by the department.

27 (d) Substantiated reports.--If the report is substantiated
28 by the agency, or if the client assessment is necessary in order
29 to determine whether or not the report is substantiated, the
30 agency shall provide for a timely client assessment if the older

1 adult consents to an assessment. Upon completion of the
2 assessment, written findings shall be prepared which shall
3 include recommended action. This service plan shall provide for
4 the least restrictive alternative, encouraging client self-
5 determination and continuity of care. The service plan shall be
6 in writing and shall include a recommended course of action,
7 which may include the pursuit of civil or criminal remedies. If
8 an older adult found to be in need of protective services does
9 not consent to a client assessment or the development of a
10 service plan, the agency may apply to the case the provisions of
11 section 307.

12 Section 304. Provision of services; access to records and
13 persons.

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

16 (1) An older adult requests such services.

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

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

21 (b) Consent by request.--Except as provided in section 307,
22 an individual shall receive protective services voluntarily. In
23 no event may protective services be provided under this chapter
24 to any person who does not consent to such services or who,
25 having consented, withdraws such consent, unless such services
26 are ordered by a court, requested by a guardian of the older
27 adult or provided under section 307. Nothing in this chapter
28 shall prevent the agency from petitioning for the appointment of
29 a guardian pursuant to Title 20 of the Pennsylvania Consolidated
30 Statutes (relating to decedents, estates and fiduciaries).

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

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

7 (1) Investigations of reports under section 303.

8 (2) Assessment of client need.

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

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

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

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

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

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

23 (f) Denial of access to persons.--If the agency is denied
24 access to an older adult reported to be in need of protective
25 services and access is necessary to complete the investigation
26 or the client assessment and service plan, or the delivery of
27 needed services in order to prevent further abuse, neglect,
28 exploitation or abandonment of the older adult reported to be in
29 need of protective services, the agency may petition the court
30 for an order to require the appropriate access when either of

1 the following conditions apply:

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

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

9 (g) Access by consent.--The agency's access to confidential
10 records held by other agencies or individuals and the agency's
11 access to an older adult reported to be in need of protective
12 services shall require the consent of the older adult or a
13 court-appointed guardian except as provided for under this
14 section or section 307.

15 (h) Denial of access to records.--If the agency is denied
16 access to records necessary for the completion of a proper
17 investigation of a report or a client assessment and service
18 plan, or the delivery of needed services in order to prevent
19 further abuse, neglect, exploitation or abandonment of the older
20 adult reported to be in need of protective services, the agency
21 may petition the court of common pleas for an order requiring
22 the appropriate access when either of the following conditions
23 apply:

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

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

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

2 Section 304.1. Receipt and investigation of reports.

3 (a) Receipt.--The area agency on aging shall be capable of
4 receiving reports of older adults in need of protective services
5 24 hours per day, seven days per week. This capability may
6 include the use of a local emergency response system or a crisis
7 intervention agency provided that access can be made to a
8 protective services caseworker in appropriate emergency
9 situations, as set forth in regulations issued by the
10 department. All reports received orally shall be documented
11 immediately in a manner set forth by the department.

12 (b) Investigation.--

13 (1) The area agency on aging shall investigate each
14 report in accordance with regulations issued by the
15 department. The investigation shall be initiated within 72
16 hours after the receipt of the report and carried out under
17 regulations issued by the department. The regulations shall
18 provide for the methods of conducting investigations and
19 shall assure that steps are taken to avoid any conflict of
20 interest.

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

24 (c) Access to older adults.--

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

28 (i) Investigate reports.

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

1 (iii) Provide for the delivery of services by the
2 AAA or other service provider arranged for under the
3 service plan.

4 (2) If the AAA is denied access to an older adult
5 reported to be in need of protective services, the AAA may
6 petition the court for an order to require any of the
7 following:

8 (i) Access to the older adult.

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

10 (iii) A psychiatric or psychological evaluation of
11 the older adult.

12 (3) For purposes of paragraph (2), denial of access may
13 include:

14 (i) interference by a caretaker or third party with
15 the completion of the investigation or the assessment and
16 service plan or the delivery of services; or

17 (ii) refusal of the older person to permit or
18 cooperate with the AAA investigation as a result of
19 coercion, extortion or justifiable fear of future abuse,
20 neglect, exploitation, abandonment or death.

21 (d) Access to records.--

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

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

25 (ii) Planning and delivery of services.

26 (iii) Investigating reports.

27 (2) Records of State agencies, private organizations,
28 financial institutions, fiduciaries, medical institutions and
29 practitioners and persons reasonably suspected of engaging in
30 or facilitating the abuse, neglect, exploitation or

1 abandonment of an older adult, which the AAA reasonably
2 believes to be necessary to complete an investigation or
3 assessment and service plan, shall be requested in written
4 form and be made available to the AAA unless the disclosure
5 would be prohibited by any other provision of Federal or
6 State law. Except as provided by a court order, access to
7 records of financial institutions shall be limited to records
8 relating to the most recent transaction or transactions that
9 may comprise financial exploitation and that occurred not
10 more than 60 calendar days prior to the first transaction
11 that was reported or 60 calendar days after the last
12 transaction that was reported.

13 (3) If the AAA can demonstrate that the older adult has
14 denied access to the older adult's records because of
15 incapacity, coercion, extortion or justifiable fear, the AAA
16 shall have the power to access all records. If the older
17 adult denying access to records is competent, the AAA may
18 petition the court for an order to require access.

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

22 (5) The area agency on aging or the department may
23 compensate any person requested or ordered to provide records
24 to the AAA for the reasonable costs of producing records in a
25 manner consistent with the requirements of section 1115(a) of
26 the Right to Financial Privacy Act of 1978 (Public Law 96-
27 630, 12 U.S.C. § 3415).

28 (e) Investigations involving facilities.--

29 (1) If the report concerns a facility, the area agency
30 on aging shall notify the local ombudsman and the licensing

1 agency. Any investigations concerning facilities shall be
2 conducted under procedures developed by the department in
3 consultation with the State agency with oversight authority
4 for such facility.

5 (2) The department and any other State agency shall
6 share information with one another and with mandatory
7 reporters, fiduciaries and financial institutions necessary
8 to ensure the health, safety and welfare of the older adult
9 and to assist financial institutions and fiduciaries in
10 exercising their authority to prohibit disbursement of funds
11 and transactions as provided by section 301.1(c).

12 (3) Facilities shall take reasonable steps to protect
13 the older adults following receipt of a report of suspected
14 abuse, neglect, abandonment or exploitation involving a
15 facility employee, including a plan of supervision or
16 suspension.

17 (f) Investigations involving law enforcement.--

18 (1) Law enforcement officials, the area agency on aging
19 and mandatory reporters shall coordinate their respective
20 investigations and shall advise each other and provide any
21 applicable additional information on an ongoing basis.

22 (2) Upon receiving a report that falls into any of the
23 following categories, the AAA shall immediately notify law
24 enforcement:

25 (i) Suspicious death.

26 (ii) Serious bodily injury.

27 (iii) Sexual abuse.

28 (3) Following a referral to law enforcement:

29 (i) The AAA shall contact law enforcement to obtain
30 information about any actions taken and the outcomes,

1 including any decisions regarding criminal charges.

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

4 (iii) To the extent a law enforcement agency
5 exercises discretion not to pursue or to defer a criminal
6 investigation or prosecution, the area agency on aging
7 may initiate civil proceedings to obtain a protective
8 order, seek injunctive relief or seek compensation or
9 restitution for damages from a person that abuses,
10 neglects, abandons or exploits an older adult.

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

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

18 (h) Substantiated reports.--

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

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

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

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

30 (5) An older adult shall not be found to be abused or

1 neglected solely on the grounds of environmental factors that
2 are beyond the control of the older adult or the caretaker,
3 such as inadequate housing, furnishings, income, clothing or
4 medical care.

5 Section 304.2. Provision of protective services.

6 (a) Availability of protective services.--The area agency on
7 aging shall offer protective services under any of the following
8 conditions:

9 (1) An older adult requests protective services.

10 (2) Another interested person requests protective
11 services on behalf of an older adult.

12 (3) After investigation of a report, the AAA determines
13 the older adult is in need of protective services.

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

18 (c) Interference with protective services.--If any person
19 interferes with the provision of protective services or
20 interferes with the right of an older adult to consent to
21 provision of protective services, the area agency on aging may
22 petition the court for an order enjoining such interference.

23 (d) Financial obligations; liabilities and payments.--All
24 older adults receiving services and all agencies providing
25 protective services under this act shall comply with the
26 following provisions regarding liability for the payment of
27 services:

28 (1) Funding to provide or make available protective
29 services under this act shall not be used in place of any
30 public or private entitlements or benefits for which the

1 older adult receiving protective services under this act is
2 or may be eligible.

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

6 (i) Administering protective services plans.

7 (ii) Receiving and maintaining records of reports of
8 abuse, neglect, exploitation and abandonment.

9 (iii) Conducting investigations of reported abuse,
10 neglect, exploitation and abandonment.

11 (iv) Carrying out assessments and developing service
12 plans.

13 (v) Petitioning the court.

14 (vi) Providing for emergency involuntary
15 intervention.

16 (vii) Arranging for available services needed to
17 carry out service plans, which may include, as
18 appropriate, arranging for services for other persons in
19 the household unit in order to reduce, correct or
20 eliminate abuse, neglect, exploitation or abandonment of
21 an older adult.

22 (viii) Purchasing, on a temporary basis, protective
23 services determined by a service plan to be necessary to
24 reduce, correct or eliminate abuse, neglect, exploitation
25 or abandonment of an older adult when such protective
26 services are not available within the existing resources
27 of the AAA or other appropriate provider. Purchase of
28 protective services under this subparagraph shall be
29 limited to a 30-day period, which period may be renewed
30 with adequate justification under regulations issued by

1 the department.

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

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

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

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

14 Section 306. Confidentiality of records.

15 (a) General rule.--Information contained in reports, records
16 of investigation, client assessment and service plans shall be
17 considered confidential and shall be maintained under
18 regulations promulgated by the department to safeguard
19 confidentiality. Except as provided below, this information
20 shall not be disclosed to anyone outside the agency other than
21 to a court of competent jurisdiction or pursuant to a court
22 order.

23 (b) Limited access to the agency's protective services
24 records.--

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

29 (2) In arranging specific services to carry out service
30 plans, the agency may disclose to appropriate service

1 providers such information as may be necessary to initiate
2 the delivery of services.

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

7 (4) The release of information that would identify the
8 person who made a report of suspected abuse, neglect,
9 exploitation or abandonment or person who cooperated in a
10 subsequent investigation, is hereby prohibited unless the
11 secretary can determine that such a release will not be
12 detrimental to the safety of such person.

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

17 (6) For the purposes of monitoring agency performance,
18 appropriate staff of the department may access agency
19 protective services records.]

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

21 Section 307. Involuntary intervention by emergency court order.

22 (a) Emergency petition.--[Where there was clear and
23 convincing evidence that if protective services are not
24 provided, the person to be protected is at imminent risk of
25 death or serious physical harm, the agency may petition the
26 court for an emergency order to provide the necessary services.
27 The courts of common pleas of each judicial district shall
28 ensure that a judge or district justice is available on a 24-
29 hour-a-day, 365-day-a-year basis to accept and decide on
30 petitions for an emergency court order under this section

1 whenever the agency determines that a delay until normal court
2 hours would significantly increase the danger the older adult
3 faces.]

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

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

14 (3) The courts of common pleas of each judicial district
15 shall ensure that a judge or magisterial district judge is
16 available on a 24-hour-a-day, 365-days-a-year basis to accept
17 and rule on petitions for emergency court orders under this
18 section whenever the AAA determines that a delay until normal
19 court hours may significantly increase danger to the older
20 adult.

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

25 (c) Right to counsel.--In order to protect the rights of an
26 older adult for whom protective services are being ordered, an
27 emergency court order under this section shall provide that the
28 older adult has the right to legal counsel. If the older adult
29 is unable to provide for counsel, such counsel shall be
30 appointed by the court.

1 (d) Forcible entry.--[Where it is necessary to forcibly
2 enter premises after obtaining a court order, a peace officer
3 may do so, accompanied by a representative of the agency.] If it
4 is necessary to forcibly enter a premises after obtaining a
5 court order, a law enforcement official may do so, accompanied
6 by a representative of the area agency on aging.

7 (e) Health and safety requirements.--The [agency] area
8 agency on aging shall take reasonable steps to [assure] ensure
9 that while the [person is receiving] older adult receives
10 protective services under an emergency court order, the health
11 and safety needs of any of the [person's] older adult's
12 dependents are met and that personal property and the dwelling
13 the [person] older adult occupies are secure.

14 [(f) Exclusion of remedy.--Nothing in this chapter shall be
15 interpreted to deny any older adult access to the emergency
16 medical services or police protection that would be provided to
17 anyone, regardless of age, in similar circumstances.]

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

20 [Section 308. Individual rights.]

21 (a) Rights of protective services clients.--The agency shall
22 observe the following minimum requirements to safeguard the
23 rights of an older adult who is reported to be in need of
24 protective services:

25 (1) The agency shall discreetly notify the older person
26 during the investigation that a report has been made and
27 shall provide the person with a brief summary of the nature
28 of the report.

29 (2) As provided under section 306(b)(3), the older adult
30 may request, and the agency shall provide, additional

1 information contained in the report.

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

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

12 (b) Rights of alleged abusers.--An individual who is alleged
13 in a protective services report to be a perpetrator of the
14 abuse, neglect, exploitation or abandonment of an older adult
15 shall be entitled to the following if the report is
16 substantiated by the agency:

17 (1) Such an individual shall be notified by the agency
18 at the conclusion of the investigation of the report that
19 allegations have been made and shall be given a brief summary
20 of the allegations.

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

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

29 Section 309. Financial obligations; liabilities and payments.

30 All individuals receiving services and all agencies providing

1 services under this chapter shall comply with the following
2 provisions regarding liability for the payment of services:

3 (1) Funding to provide or make available protective
4 services under this chapter shall not supplant any public and
5 private entitlements or resources for which persons receiving
6 protective services under this chapter are or may be
7 eligible, and shall not be available until such persons have
8 exhausted their eligibility and receipt of benefits under
9 said public and private entitlements or resources.

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

13 (i) Administering protective services plans required
14 under section 301(c).

15 (ii) Receiving and maintaining records of reports of
16 abuse under section 302.

17 (iii) Conducting investigations of reported abuse
18 under section 303.

19 (iv) Carrying out client assessments and developing
20 service plans under section 303.

21 (v) Petitioning the court under sections 304 and
22 307.

23 (vi) Providing emergency involuntary intervention
24 under section 307.

25 (vii) Arranging for available services needed to
26 carry out service plans, which may include, as
27 appropriate, arranging for services for other household
28 members in order to reduce, correct or eliminate abuse,
29 neglect, exploitation or abandonment of an older adult.

30 (viii) Purchasing, on a temporary basis, services

1 determined by a service plan to be necessary to reduce,
2 correct or eliminate abuse, neglect, exploitation or
3 abandonment of an older adult when such services are not
4 available within the existing resources of the agency or
5 other appropriate provider. Purchase of services under
6 this provision is limited to a 30-day period which may be
7 renewed with adequate justification under regulations
8 promulgated by the department.

9 (3) The obligation of the Commonwealth and the counties
10 to provide funds to the department or any agency for services
11 provided pursuant to this chapter shall be entirely
12 discharged by the appropriations made to the department or an
13 agency. Provided that the agency has met its responsibility
14 under the law, no action at law or equity shall be instituted
15 in any court to require the department, any agency, county or
16 the Commonwealth to provide benefits or services under this
17 chapter for which appropriations from the Commonwealth or
18 counties are not available.

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

23 Section 310. Regulations; enforcement.

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

28 (b) Enforcement.--This chapter shall be enforced only after
29 promulgation of regulations by the department, which shall occur
30 no later than 12 months following passage of this chapter,

1 except that section 301 shall apply when the area agency on
2 aging certifies to the department that it is prepared to fulfill
3 its responsibilities. The certification shall be made within 90
4 days following promulgation of regulations.

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

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

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

9 Section 312. Confidentiality of records.

10 (a) General rule.--Information contained in reports, records
11 of investigation, assessments and service plans created under
12 this act shall be considered privileged and confidential and
13 shall be maintained under regulations issued by the department.
14 Except as provided below, this information shall only be
15 disclosed by the area agency on aging for the purpose of
16 development and implementation of protective services. Neither
17 the department nor the AAA may release information that could be
18 detrimental to an older adult, except that such information
19 shall be released to law enforcement under subsection (b) (2).
20 All information contained in protective services records is
21 subject to other Federal and State confidentiality and security
22 laws.

23 (b) Access.--

24 (1) Any person in possession of protective services
25 records may only provide access to the records, or
26 information contained in the records, to:

27 (i) A court of competent jurisdiction or another
28 party pursuant to a court order for purposes of
29 implementation of this act or other law enforcement or
30 official governmental purposes, but not for use by

1 nongovernmental persons in civil litigation. A subpoena
2 shall not be deemed a court order for purposes of this
3 section.

4 (ii) Law enforcement officials or the coroner, if
5 the information is relevant to their investigation of
6 abuse, neglect, exploitation or abandonment or death of
7 the older adult.

8 (iii) A practitioner of the healing arts who is
9 examining or treating the older adult and who suspects
10 that the older adult is in need of protection under this
11 act.

12 (iv) The director or an individual specifically
13 designated in writing by the director of any hospital or
14 other medical institution where the older adult is being
15 treated, if the director or designee suspects that the
16 recipient is in need of protection under this act.

17 (v) A financial institution or fiduciary as
18 necessary to exercise the authority to prohibit
19 disbursement of funds and transactions provided by
20 section 301.1(c).

21 (2) In arranging specific services to carry out service
22 plans, the area agency on aging may disclose to appropriate
23 service providers such information as may be necessary to
24 initiate delivery of services.

25 (3) The older adult who is the subject of a report or
26 the older adult's guardian, if the guardian is not named as
27 the alleged perpetrator, may receive, upon written request, a
28 summary of the report of need, except information that would
29 identify the person who made a report of suspected abuse,
30 neglect, exploitation or abandonment or persons who

1 cooperated in a subsequent investigation.

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

6 (5) For the purposes of monitoring agency performance or
7 conducting other official duties, appropriate staff of the
8 department, as designated by the secretary, may access AAA
9 protective services records.

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

13 (7) The department or the AAA may share a summary of
14 protective services information with another AAA that is
15 performing duties under this act that are relevant to older
16 adults within their jurisdictions.

17 (8) An employee of an agency of another state who
18 performs older adult protective services similar to those
19 under this act may access protective services records
20 relevant to older adults within their jurisdiction.

21 (c) Protecting identity of reporter and cooperating
22 witnesses.--

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

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

1 Section 313. Rights of older adults.

2 (a) General rule.--An area agency on aging shall discreetly
3 notify the older adult during the investigation that a report
4 has been made and shall provide the older adult a brief summary
5 of the nature of the report.

6 (b) Release of information.--As provided in section
7 312(b) (3), an older adult who is the subject of a report, or the
8 older adult's guardian, if the guardian is not named as the
9 alleged perpetrator in the report, may receive, upon written
10 request, a summary of information contained in the report of
11 need except information that would identify the person who made
12 a report of suspected abuse, neglect, exploitation or
13 abandonment or persons who cooperated in a subsequent
14 investigation.

15 (c) Appeal.--Any denial of protective services by the
16 department or an authorized area agency on aging under this act
17 may be appealed according to the provisions of the rules and
18 regulations issued by the department under Article XXII-A of the
19 act of April 9, 1929 (P.L.177, No.175), known as The
20 Administrative Code of 1929.

21 Section 314. Electronic records.

22 Any requirements of this act that information be prepared,
23 filed, submitted, requested, maintained or signed in writing may
24 be satisfied by the use of an electronic record or signature to
25 the extent otherwise permitted by law, unless the department, an
26 AAA or a law enforcement agency requires the use of a written
27 record or signature.

28 Section 10. Sections 501, 502 and 503 of the act are
29 repealed:

30 [Section 501. Definitions.]

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

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

6 "State Police." The Pennsylvania State Police.

7 Section 502. Information relating to prospective facility
8 personnel.

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

14 (1) Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal
15 history record information), a report of criminal history
16 record information from the State Police or a statement from
17 the State Police that their central repository contains no
18 such information relating to that person. The criminal
19 history record information shall be limited to that which is
20 disseminated pursuant to 18 Pa.C.S. § 9121(b)(2) (relating to
21 general regulations).

22 (2) Where the applicant is not and for the two years
23 immediately preceding the date of application has not been a
24 resident of this Commonwealth, administration shall require
25 the applicant to submit with the application for employment a
26 report of Federal criminal history record information
27 pursuant to the Federal Bureau of Investigation's
28 appropriation under the Departments of State, Justice, and
29 Commerce, the Judiciary, and Related Agencies Appropriation
30 Act, 1973 (Public Law 92-544, 86 Stat. 1109). The department

1 shall be the intermediary for the purposes of this paragraph.
2 For the purposes of this paragraph, the applicant shall
3 submit a full set of fingerprints in a manner prescribed by
4 the department. The Commonwealth shall submit the
5 fingerprints to the Federal Bureau of Investigation for a
6 national criminal history record check. The information
7 obtained from the criminal record check shall be used by the
8 department to determine the applicant's eligibility. The
9 determination shall be submitted to the administrator by the
10 applicant prior to commencing employment. The administrator
11 shall insure confidentiality of the information. The
12 provisions of 18 Pa.C.S. § 9121(b)(2) shall not apply if the
13 request for a report of Federal criminal history record
14 information is made pursuant to this section.

15 (b) (Reserved).

16 Section 503. Grounds for denying employment.

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

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

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

27 Chapter 25 (relating to criminal homicide).

28 Section 2702 (relating to aggravated assault).

29 Section 2901 (relating to kidnapping).

30 Section 2902 (relating to unlawful restraint).

1 Section 3121 (relating to rape).
2 Section 3122.1 (relating to statutory sexual
3 assault).
4 Section 3123 (relating to involuntary deviate sexual
5 intercourse).
6 Section 3124.1 (relating to sexual assault).
7 Section 3125 (relating to aggravated indecent
8 assault).
9 Section 3126 (relating to indecent assault).
10 Section 3127 (relating to indecent exposure).
11 Section 3301 (relating to arson and related
12 offenses).
13 Section 3502 (relating to burglary).
14 Section 3701 (relating to robbery).
15 A felony offense under Chapter 39 (relating to theft
16 and related offenses) or two or more misdemeanors under
17 Chapter 39.
18 Section 4101 (relating to forgery).
19 Section 4114 (relating to securing execution of
20 documents by deception).
21 Section 4302 (relating to incest).
22 Section 4303 (relating to concealing death of child).
23 Section 4304 (relating to endangering welfare of
24 children).
25 Section 4305 (relating to dealing in infant
26 children).
27 Section 4952 (relating to intimidation of witnesses
28 or victims).
29 Section 4953 (relating to retaliation against witness
30 or victim).

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

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

5 Section 6301 (relating to corruption of minors).

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

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

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

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

14 (a) General rule.--Prior to hiring or engaging an applicant,
15 a facility shall require the applicant to submit to the facility
16 the following information obtained within the preceding one-year
17 period:

18 (1) Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal
19 history record information), a report of criminal history
20 record information from the Pennsylvania State Police or a
21 statement from the Pennsylvania State Police that their
22 central repository contains no such information relating to
23 the applicant. The provisions of 18 Pa.C.S. § 9121(b)(2)
24 (relating to general regulations) shall not apply to criminal
25 history information or other criminal history record
26 information requested or received under this section.

27 (2) Where the applicant is not, and for the two years
28 immediately preceding the date of application has not been, a
29 resident of this Commonwealth, the facility shall require the
30 applicant to submit with the application for employment a

1 report of Federal criminal history record information
2 pursuant to the Federal Bureau of Investigation's
3 appropriation under the Departments of State, Justice, and
4 Commerce, the Judiciary, and Related Agencies Appropriation
5 Act, 1973 (Public Law 92-544, 86 Stat. 1109), subject to the
6 following:

7 (i) The department shall be the intermediary for the
8 purposes of this paragraph. The applicant shall submit a
9 full set of fingerprints to the Federal Bureau of
10 Investigation in a manner designated by the department.
11 The provisions of 18 Pa.C.S. § 9121(b)(2) shall not apply
12 to criminal history information or other criminal history
13 record information requested or received under this
14 section.

15 (ii) Criminal history information shall be used by
16 the department to determine the applicant's eligibility
17 for employment with a facility. The employment
18 determination shall be provided to the facility and the
19 applicant prior to commencement of employment. The
20 facility shall ensure confidentiality of the information.

21 (3) The department may require the applicant to submit
22 additional information from a court or other authority within
23 the time frame designated by the department. Failure to
24 provide the requested information within the time frame
25 designated by the department may result in employment
26 ineligibility.

27 (b) Prohibited offenses.--The following offenses and Federal
28 or out-of-State offenses similar in nature shall be prohibited,
29 as follows:

30 (1) Lifetime ban. A facility may not hire or engage an

1 applicant required to submit criminal history information
2 under this act if the applicant's criminal history record
3 information indicates that the applicant has been convicted
4 of an offense or attempt, solicitation or conspiracy to
5 commit an offense under one of the following provisions of 18
6 Pa.C.S. (relating to crimes and offenses):

7 Chapter 25 (relating to criminal homicide).

8 Section 2718 (relating to strangulation).

9 Section 3011 (relating to trafficking in
10 individuals).

11 Section 3121 (relating to rape).

12 Section 3123 (relating to involuntary deviate sexual
13 intercourse).

14 Section 3124.2 (relating to institutional sexual
15 assault).

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

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

27 Section 2702 (relating to aggravated assault).

28 Section 2713 (relating to neglect of care-dependent
29 person).

30 Section 2715 (relating to threat to use weapons of

1 mass destruction).

2 Section 2716 (relating to weapons of mass
3 destruction).

4 Section 2717 (relating to terrorism).

5 Section 2901 (relating to kidnapping).

6 Section 2903 (relating to false imprisonment).

7 Section 3122.1 (relating to statutory sexual
8 assault).

9 Section 3124.1 (relating to sexual assault).

10 Section 3125 (relating to aggravated indecent
11 assault).

12 Section 3126 (relating to indecent assault).

13 Section 3129 (relating to sexual intercourse with an
14 animal).

15 Section 3212 (relating to infanticide).

16 Section 4302 (relating to incest).

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

18 A felony offense under section 4304 (relating to
19 endangering welfare of children).

20 Section 4305 (relating to dealing in infant
21 children).

22 Section 5510 (relating to abuse of corpse).

23 Section 5903 (a) (1), (a) (3) (ii), (a) (5) (ii), (a) (6),
24 (c) or (d) (relating to obscene and other sexual
25 materials and performances).

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

27 Section 6318 (relating to unlawful contact with a
28 minor).

29 Section 6319 (relating to solicitation of minors to
30 traffic drugs).

1 Section 6320 (relating to the sexual exploitation of
2 children).

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

11 (i) Any of the following provisions of 18 Pa.C.S.:
12 Two or more misdemeanors under section 2705 (relating
13 to recklessly endangering another person).

14 Section 2710 (relating to ethnic intimidation).

15 Section 2902 (relating to unlawful restraint).

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

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

20 Section 3127 (relating to indecent exposure).

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

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

25 Section 3502 (relating to burglary).

26 Section 3701 (relating to robbery).

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

29 Two or more misdemeanors under Chapter 39.

30 Section 4101 (relating to forgery).

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

3 Section 4106 (relating to access device fraud).

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

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

8 Section 4120 (relating to identity theft).

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

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

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

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

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

19 Section 6301 (relating to corruption of minors).

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

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

30 Section 3735 (relating to homicide by vehicle while

1 driving under influence).

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

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

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

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

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

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

18 (c) Waiver request.--

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

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

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

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

29 (ii) The nature and circumstances of the
30 individual's conviction.

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

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

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

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

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

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

13 (d) Waiver approval.--

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

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

19 (e) Applicability.--

20 (1) A waiver request granted under subsection (d)
21 applies only to the crimes and facilities types listed on the
22 waiver application.

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

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

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

1 (f) Limitations.--

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

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

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

11 (g) Appeal rights.--If the department denies an individual's
12 request for a waiver, the individual shall have 20 days to
13 submit a written appeal to the Secretary of Aging.

14 (1) Upon receipt of such notice of appeal, the Secretary
15 of Aging shall have 30 days to complete a review of the
16 relevant facts and circumstances and issue a final decision.

17 (2) All final decisions by the Secretary of Aging shall
18 be reviewable in accordance with the laws.

19 (h) Duties and responsibilities of the department.--

20 (1) Within 60 days from the effective date of this
21 section, the department shall develop a waiver form to be
22 used by individuals seeking a waiver from the restrictions
23 listed in subsection (b).

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

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

1 documentation relating to the individual's release or discharge
2 from a State or county correctional institution or from
3 termination of supervised probation or parole.

4 (j) Employee disclosure.--

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

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

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

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

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

29 (4) If an employee or administrator refuses to submit
30 the form, the facility shall immediately require the employee

1 to submit a current report of criminal history record
2 information as required under subsection (a).

3 (k) Penalties.--

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

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

11 (l) Provisional employees for limited periods.--

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

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

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

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

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

30 (3) The department shall develop guidelines, in

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

6 Section 12. Sections 504, 505, 506, 507, 508, 702, 703, 704,
7 705 and 706 of the act are repealed:

8 Section 504. Regulations.

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

12 [Section 505. Violations.]

13 (a) Administrative.--

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

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

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

30 (b) Criminal.--

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

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

11 Section 506. Provisional employees for limited periods.

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

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

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

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

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

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

6 Section 507. State Police.

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

13 Section 508. Applicability.

14 This chapter shall apply as follows:

15 (1) An individual who, on the effective date of this
16 chapter, has continuously for a period of one year been an
17 employee of the same facility shall be exempt from section
18 502 as a condition of continued employment.

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

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

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

30 Section 702. Reports to department and coroner.

1 (a) Department.--

2 (1) Within 48 hours of receipt of a written report under
3 section 701(a) involving sexual abuse, serious physical
4 injury, serious bodily injury or suspicious death, the agency
5 shall transmit a written report to the department.

6 Supplemental reports shall be transmitted as they are
7 obtained by the agency.

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

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

12 (ii) Where the suspected abuse occurred.

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

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

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

21 (vi) The source of the report.

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

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

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

29 (b) Coroner.--For a report under section 701(a) which
30 concerns the death of a recipient, if there is reasonable cause

1 to suspect that the recipient died as a result of abuse, the
2 agency shall give the oral report and forward a copy of the
3 written report to the appropriate coroner within 24 hours.

4 Section 703. Investigation.

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

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

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

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

24 (e) Compliance with Chapter 3.--In addition to the
25 provisions of this section, the agency shall comply with Chapter
26 3.

27 Section 704. Restrictions on employees.

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

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

8 (b) Prohibition.--Upon the filing of criminal charges
9 against an employee, the Commonwealth agency which licenses the
10 facility shall order the facility to immediately prohibit that
11 employee from having access to recipients at the facility. If
12 that employee is a director, operator, administrator or
13 supervisor, that employee shall be subject to restrictions
14 deemed appropriate by the Commonwealth agency which licenses the
15 facility to assure the safety of recipients of the facility.
16 Section 705. Confidentiality of and access to confidential
17 reports.

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

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

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

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

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

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

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

9 (6) A guardian of the recipient.

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

12 (8) The Attorney General.

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

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

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

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

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

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

30 (e) Protecting identity of person making report.--Except for

1 reports to law enforcement officials, the release of data that
2 would identify the individual who made a report under this
3 chapter or an individual who cooperated in a subsequent
4 investigation is prohibited. Law enforcement officials shall
5 treat all reporting sources as confidential information.

6 Section 706. Penalties.

7 (a) Administrative.--

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

15 (2) A facility owner that intentionally or willfully
16 fails to comply with or obstructs compliance with this
17 chapter or that intimidates or commits a retaliatory act
18 against an employee who complies in good faith 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 regulate 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 (c) Penalties for failure to report.--A person required
11 under this chapter to report a case of suspected abuse who
12 willfully fails to do so commits a summary offense for the first
13 violation and a misdemeanor of the third degree for a second or
14 subsequent violation.]

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

17 (a) Civil penalties.--

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

30 (2) The Commonwealth agency or agencies which license a

1 facility shall determine violations of section 503.1 and may
2 issue an order assessing a civil penalty of not more than
3 \$5,000.

4 (b) Damages for retaliatory action.--

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

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

15 (c) Damages for intimidation.--

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

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

27 (d) Criminal penalties.--

28 (1) A mandatory reporter under this act who
29 intentionally fails to report suspected abuse, neglect,
30 exploitation or abandonment commits a summary offense for the

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

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

13 (e) Immunity.--

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

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

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

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

1 older adults.

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

3 [Section 707. Immunity.

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

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

8 Section 707.1. Immunity from civil and criminal liability.

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

16 Section 707.2. Funding.

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

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

20 Section 708. Regulations and annual report.

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

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

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

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

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