WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

ENROLLED
Committee Substitute for
SENATE BILL NO. 121

(By Mr. ____________________________)

PASSED ________ April 11, 1981
In Effect ninety days from Passage
AN ACT to amend chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six, relating to social services for adults; authorizing the department of welfare to provide such services; providing definitions; establishing a comprehensive protective services system; providing for emergency services; providing for promulgation of rules and regulations allowing for payment of services to incapacitated persons as defined; termination or reduction of assistance; providing for remedies in circuit court; order of attachment for and commitment of incapacitated person, requiring appointment of guardian ad litem; prohibiting compelling of acceptance of services and discriminating against those who refuse to accept services and providing for the confidentiality of records.

Be it enacted by the Legislature of West Virginia:

That chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article six, to read as follows:

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-1. Definitions.

1 The following words and terms, when used in this article, shall have the same meaning hereafter ascribed to them unless the context clearly indicates a different meaning:
(1) "Adult protective services agency" shall mean any public or nonprofit private agency, corporation, board or organization furnishing protective services to adults;

(2) "Abuse" shall mean the infliction or threat to inflict physical pain or injury on or the imprisonment of any incapacitated adult;

(3) "Neglect" shall mean the (i) failure to provide the necessities of life to an incapacitated adult with intent to coerce or physically harm such incapacitated adult or (ii) the unlawful expenditure or willful dissipation of the funds or other assets owned or paid to or for the benefit of an incapacitated adult;

(4) "Incapacitated adult" shall mean any person who by reason of physical, mental or other infirmity is unable to independently carry on the daily activities of life necessary to sustaining life and reasonable health;

(5) "Emergency" or "emergency situation" shall mean a situation or set of circumstances which presents a substantial and immediate risk of death or serious permanent injury to an incapacitated adult.

§9-6-2. Adult protective services; rules and regulations; organization and duties.

There is hereby established and continued within the department of welfare the system of adult protective services heretofore existing. Within sixty days of the effective date of this article, the commissioner shall prescribe the organization and duties of and procedures which shall be used by the department to effectuate the purposes of this article, which regulations may be amended and supplemented from time to time. The commissioner shall design and arrange such regulations to attain, or move toward the attainment of the following goals, to the extent that the commissioner believes feasible under the provisions of this article within the state appropriations and other funds available:

(1) achieving or maintaining self-sufficiency and self-support,

(2) preventing, reducing, and eliminating dependency on the state,

(3) preventing, reducing, and eliminating neglect, abuse, and exploitation of adults who are unable to protect their own interests,
(4) preventing and reducing institutional care by
providing less intensive forms of care, preferably in the home,
(5) referring and admitting adults to institutional care only
where other available services are inappropriate, and
(6) providing services and monitoring to adults in
institutions designed to assist adults in returning to
community settings.

Such regulations shall provide for the means by which the
department shall cooperate with federal, state and other
agencies to fulfill the objectives of the system of adult
protection services.

§9-3. Cooperation among agencies; termination and reduction
of agencies in discretion of commissioner; hearing and
appeal of commissioner's decision.

The department may cooperate with any adult protective
services agency and may at any time establish or increase,
and reduce or terminate any assistance granted to or through
any adult protective services agency: Provided, That no
reduction or termination shall be made unless the
commissioner, in his discretion, first determines that such
protective services agency unreasonably fails or refuses to
use or apply such assistance in a manner which promotes the
goals established under section two of this article: Provided,
however, That assistance granted to a recipient client of the
department shall not be withheld or reduced but shall instead
be paid in whole or in part to some other protective services
agency, which the commissioner finds will better serve the
interests of the recipient client or to the person having actual
custody of such recipient client.

In the case of a refusal to establish, maintain, increase,
reduce or terminate any assistance to a protective services
agency client or person having custody, such agency, client or
person may within thirty days thereof demand a hearing on
such failure which hearing shall be conducted in accord with
the provisions of law relating to hearings upon a refusal of
assistance by the department in any other case and shall
include the right of appeal to an appropriate circuit court as in
such cases of refusal of assistance.

§9-6-4. Emergency situations; guardian ad litem; injunction in
cases of abuse and neglect.

The department or any reputable person may bring and
maintain an action against any person having actual care,
custody or control of an incapacitated adult, for injunctive relief, including a preliminary injunction, to restrain and abate any abuse or neglect of an incapacitated adult or to abate an emergency situation. In any such proceeding the court shall appoint a guardian ad litem, to protect the interests of the incapacitated adult, who shall not be an employee of the state nor be a party to the proceeding nor be selected by or in the employ of any party to the proceeding:

Provided, That the court may by order terminate assistance granted or paid to any person found to have abused or neglected an incapacitated adult and order any such assistance to be paid to another person solely for the use and benefit of such abused or neglected person, and grant such other equitable relief as may be appropriate in the circumstances to restrain and abate such abuse or neglect:

Provided, however, That in the case of an action to abate an emergency situation, the court may grant the relief authorized in section five of this article.

§9-6-5. Order of attachment; right of entry into place of abode of incapacitated person; immediate remedial treatment; transportation to hospital and commitment.

Whenever a circuit court shall find in an action to abate an emergency situation that there is probable cause to believe that an incapacitated adult is in an emergency situation and that the person or persons having the immediate care, custody and control of such incapacitated adult refuses to take necessary steps to alleviate such emergency or that such incapacitated adult is without the actual care, custody and control of any person, it may issue an order of attachment for such incapacitated adult and direct that the peace officer executing the same deliver such incapacitated adult in his custody to a hospital or other safe place except a jail, for immediate remedial treatment to reduce or avoid the risk of death or serious permanent injury. Any peace officer and such employees of the department the peace officer directs to accompany him, may enter into the place of abode to remove such incapacitated person, notwithstanding the residence therein of other persons.

If any employee or officer of the department shall by direct observation of an incapacitated adult not in the immediate care, custody or control of another have reasonable cause to believe that such incapacitated person is then and there in an
emergency situation, then such officer or employee may offer transportation to a hospital or other safe place, other than a jail, to such incapacitated adult for immediate remedial treatment to reduce or avoid the risk of death or serious permanent injury.

Immediately upon delivery of any incapacitated person to such hospital or other safe place, such officer or employee shall apply to the circuit court for and the court shall appoint, and in the case of an attachment the court shall contemporaneously with its issuance appoint, a guardian ad litem, who shall not be an employee of the state, nor be an interested party nor be selected by nor in the employ of any interested party, to represent the interests of such incapacitated adult, and the court shall fix a time, not later than one judicial day later, to determine if such remedial treatment shall continue or such incapacitated adult should be released. A copy of that attachment and notice of such hearing shall be served on any person in whose actual care, custody and control such incapacitated adult is found. If further remedial treatment is required, application shall be promptly made to the county commission or such other proper tribunal for appropriate relief: Provided, That the commitment for further remedial treatment may be continued until proceedings for such appropriate relief be concluded: Provided, however, That application for release from such remedial treatment may be made and granted at any time that the emergency ceases.

§9-6-6. Payment and termination of payment for services to incapacitated adult.

If any incapacitated adult (1) requires and is granted remedial treatment for an emergency or the department determines that an incapacitated adult is (2) abused, or (3) neglected, the department may pay any assistance granted for the use and benefit of such incapacitated adult, to the person actually providing care for such adult, and terminate payments to any person alleged or shown to have abused or neglected such incapacitated adult, or to whom such payments were made prior to such remedial treatment, for so long as such remedial treatment continues, or until such abuse or neglect is abated, and such incapacitated adult continues to be in the immediate care, custody and control of such person.
§9-6-7. Development of comprehensive system of adult protective services; prohibition against compelling acceptance of services or discrimination against those who refuse to accept the services.

The department may develop a plan for a comprehensive system of adult protective services including social case work, medical and psychiatric services, home care, day care, counseling, research and others.

It shall offer such services as are available and appropriate in the circumstances, to persons who, other than for compensation, have or intend to have the actual, physical custody and control of an incapacitated adult and to such incapacitated adults or to adults who may request and be entitled to such protective services: Provided, That except as expressly provided in this article, the department may not directly or indirectly compel the acceptance of such services by any person or discriminate against a person who refuses such services.

§9-6-8. Confidentiality of records.

All records of the department and all protective services agencies concerning an adult under this article shall be kept confidential and shall not be released: Provided, That such records may be shared with other state agencies and appropriate federal agencies where all such agencies limit the use and distribution of information contained in such records internally for the same purpose or purposes for which the information was recorded: Provided, however, That such information shall be released upon the written consent of the adult or someone authorized to act on behalf of the adult: Provided further, That a court may subpoena such records: And provided further, That nonidentifying information may be released for legitimate statistical purposes.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within is approved this the 28

day of April, 1981.

[Signature]
Governor