

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-28-81

Time _____

Mo: 121

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981



ENROLLED

Committee Substitute for
SENATE BILL NO. 21

(By Mr. Shaw)



PASSED April 11, 1981

In Effect ninety days from Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 121

(MR. SHAW, *original sponsor*)

[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,
- 2 shall have the same meaning hereafter ascribed to them
- 3 unless the context clearly indicates a different meaning:

4 (1) "Adult protective services agency" shall mean any
5 public or nonprofit private agency, corporation, board or
6 organization furnishing protective services to adults;

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

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

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

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

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

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

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

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

17 (3) preventing, reducing, and eliminating neglect, abuse,
18 and exploitation of adults who are unable to protect their own
19 interests,

20 (4) preventing and reducing institutional care by
21 providing less intensive forms of care, preferably in the home,

22 (5) referring and admitting adults to institutional care only
23 where other available services are inappropriate, and

24 (6) providing services and monitoring to adults in
25 institutions designed to assist adults in returning to
26 community settings.

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

Now §~~6-9~~⁹⁻⁶3. **Cooperation among agencies; termination and reduction
of agencies in discretion of commissioner; hearing and
appeal of commissioner's decision.**

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

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

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

1 The department or any reputable person may bring and
2 maintain an action against any person having actual care,

3 custody or control of an incapacitated adult, for injunctive
4 relief, including a preliminary injunction, to restrain and
5 abate any abuse or neglect of an incapacitated adult or to
6 abate an emergency situation. In any such proceeding the
7 court shall appoint a guardian ~~and~~ *and* litem, to protect the
8 interests of the incapacitated adult, who shall not be an
9 employee of the state nor be a party to the proceeding nor be
10 selected by or in the employ of any party to the proceeding:
11 *Provided*, That the court may by order terminate assistance
12 granted or paid to any person found to have abused or
13 neglected an incapacitated adult and order any such
14 assistance to be paid to another person solely for the use and
15 benefit of such abused or neglected person, and grant such
16 other equitable relief as may be appropriate in the
17 circumstances to restrain and abate such abuse or neglect:
18 *Provided, however*, That in the case of an action to abate an
19 emergency situation, the court may grant the relief
20 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
1 emergency situation that there is probable cause to believe
2 that an incapacitated adult is in an emergency situation and
3 that the person or persons having the immediate care,
4 custody and control of such incapacitated adult refuses to
5 take necessary steps to alleviate such emergency or that such
6 incapacitated adult is without the actual care, custody and
7 control of any person, it may issue an order of attachment for
8 such incapacitated adult and direct that the peace officer
9 executing the same deliver such incapacitated adult in his
10 custody to a hospital or other safe place except a jail, for
11 immediate remedial treatment to reduce or avoid the risk of
12 death or serious permanent injury. Any peace officer and
13 such employees of the department the peace officer directs to
14 accompany him, may enter into the place of abode to remove
15 such incapacitated person, notwithstanding the residence
16 therein of other persons.

17 If any employee or officer of the department shall by direct
18 observation of an incapacitated adult not in the immediate
19 care, custody or control of another have reasonable cause to
20 believe that such incapacitated person is then and there in an

21 emergency situation, then such officer or employee may offer
22 transportation to a hospital or other safe place, other than a
23 jail, to such incapacitated adult for immediate remedial
24 treatment to reduce or avoid the risk of death or serious
25 permanent injury.

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

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

1 If any incapacitated adult (1) requires and is granted
2 remedial treatment for an emergency or the department
3 determines that an incapacitated adult is (2) abused, or (3)
4 neglected, the department may pay any assistance granted for
5 the use and benefit of such incapacitated adult, to the person
6 actually providing care for such adult, and terminate
7 payments to any person alleged or shown to have abused or
8 neglected such incapacitated adult, or to whom such
9 payments were made prior to such remedial treatment, for so
10 long as such remedial treatment continues, or until such
11 abuse or neglect is abated, and such incapacitated adult
12 continues to be in the immediate care, custody and control of
13 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.

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

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

§9-6-8. Confidentiality of records.

1 All records of the department and all protective services
2 agencies concerning an adult under this article shall be kept
3 confidential and shall not be released: *Provided*, That such
4 records may be shared with other state agencies and
5 appropriate federal agencies where all such agencies limit the
6 use and distribution of information contained in such records
7 internally for the same purpose or purposes for which the
8 information was recorded: *Provided, however*, That such
9 information shall be released upon the written consent of the
10 adult or someone authorized to act on behalf of the adult:
11 *Provided further*, That a court may subpoena such records:
12 *And provided further*, That nonidentifying information may
13 be released for legitimate statistical purposes.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R. P. Bayler
Chairman Senate Committee

Tommy E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Joseph C. Willis
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

Mark R. ...
President of the Senate

Clayton A. Lee, Jr.
Speaker House of Delegates

The within *is approved* this the *28*

day of *April*, 1981.

John A. ...
Governor

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