ENROLLED

Committee Substitute for
SENATE BILL NO. 351

(By Mr. McGraw, Mr. President, et al.)

PASSED March 8, 1984

In Effect ninety days from Passage
AN ACT to amend and reenact sections one, two, five, seven and eight, article six, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto seven new sections, designated sections nine, ten, eleven, twelve, thirteen, fourteen and fifteen, all relating to adult protective services; definitions; redefining an "emergency situation"; establishing and continuing the system of adult protective services within the department of human services; authorizing the commissioner of such department to promulgate regulations; setting forth goals to be attained; establishing procedures for emergency situations; when peace officer or employees of such department may remove or offer transportation to an incapacitated adult; proceedings for remedial treatment; requiring department to develop a comprehensive plan to achieve goals; prohibiting the department from compelling acceptance of services; providing for confidentiality of records and
exceptions; mandating and permitting certain persons to report incidents of abuse, neglect or emergency situations; when cases of abuse and neglect are to be reported to a medical examiner or coroner; establishing procedures for reporting cases of neglect, abuse or emergency situations; availability of reports; limitations; establishing immunity from liability for persons making good faith reports; abrogating certain privileged communications; when failure to report is a crime; establishing crimes relating to the abuse or neglect of, or creation of an emergency situation for, an incapacitated adult; providing for criminal penalties; and creating exceptions when treatment is rendered by spiritual means in accordance with the tenets and practices of a recognized church or religious denomination or organization.

Be it enacted by the Legislature of West Virginia:

That sections one, two, five, seven and eight, article six, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto seven new sections, designated sections nine, ten, eleven, twelve, thirteen, fourteen and fifteen, all to read as follows:

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-1. Definitions.

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 (i) the 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 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 human services the system of adult protective services heretofore existing. The commissioner shall by regulation 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) Assisting adults who are abused, neglected or incapacitated in achieving or maintaining self-sufficiency and self-support, and preventing, reducing and eliminating their dependency on the state;

(2) Preventing, reducing and eliminating neglect and abuse of adults who are unable to protect their own interests;

(3) Preventing and reducing institutional care of adults by providing less intensive forms of care, preferably in the home;

(4) Referring and admitting abused, neglected or incapacitated adults to institutional care only where other available services are inappropriate; and

(5) 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 protective services.
§ 9-6-5. Emergency immediate remedial treatment; procedure.

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 persons, 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 injury. In the event that an order of attachment is issued pursuant to this section, any peace officer executing the order, 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 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.

§9-6-7. Comprehensive system of adult protective services; compulsory assistance prohibited.

The department shall develop a plan for a comprehensive system of adult protective services including social casework, medical and psychiatric services, home care, day care, counseling, research and others to achieve the goals of this article. 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.

Except as otherwise provided in this section, all records of the department and all protective services agencies concerning an adult under this article shall be confidential and shall not be released, except in accordance with the provisions of section eleven of this article. Unless the adult concerned is receiving adult protective services or unless there are pending proceedings with regard to such adult, the records shall be destroyed two years following their preparation. A circuit court or the supreme court of appeals may subpoena such records, but shall, before permitting their use in connection with any court proceeding, review the same for relevancy and
materiality to the issues in the proceeding, and may issue
such order to limit the examination and use of such records
or any part thereof, having due regard for the purposes of
this article and the requirements of the litigation as shall be
just.

§9-6-9. Mandatory reporting of incidences of abuse, neglect or
emergency situation.

If any medical, dental or mental health professional,
Christian science practitioner, religious healer, social
service worker, peace officer, or law-enforcement officer
has reasonable cause to believe that an incapacitated adult
is neglected, abused or in an emergency situation, or if such
person observes an incapacitated adult being subjected to
conditions that are likely to result in abuse, neglect or an
emergency situation, the person shall immediately report
the circumstances or cause a report to be made to the
department's local protective services agency: Provided,
That nothing in this article is intended to prevent
individuals from reporting on their own behalf.

In addition to those persons and officials specifically
required to report situations involving suspected abuse or
neglect of an incapacitated adult or the existence of an
emergency situation, any other person may make such a
report.

§9-6-10. Mandatory reporting to medical examiner or coroner;
postmortem investigation.

Any person or official who is required under section nine
of this article to report cases of suspected abuse or neglect
and who has probable cause to believe that an incapacitated
adult has died as a result of abuse or neglect shall report
that fact to the appropriate medical examiner or coroner.
Upon the receipt of such a report, the medical examiner or
coroner shall cause an investigation to be made and shall
report the findings to the local law-enforcement agency, the
local prosecuting attorney, the department's local adult
protective services agency and, if the institution making a
report is a hospital, to the hospital.

§9-6-11. Reporting procedures.

A report of neglect or abuse of an incapacitated adult or
of an emergency situation involving such an adult shall be
made immediately by telephone to the department's local
adult protective services agency and shall be followed by a
written report within forty-eight hours. The department
shall, upon receiving any such report, take such action as
may be appropriate and shall maintain a record thereof.
The department shall receive such telephonic reports on its
twenty-four hour, seven-day-a-week, toll-free number
established to receive calls reporting cases of suspected or
known adult abuse or neglect.
A copy of any report of abuse, neglect or emergency
situation shall be made available immediately to the
appropriate law-enforcement agency and the prosecuting
attorney, or in case of a death, to the appropriate medical
examiner or coroner's office: Provided, That the
department shall omit from such report in the first instance,
the name of the person making a report, when requested by
such person. Reports of known or suspected institutional
abuse or neglect of an incapacitated adult or the existence
of an emergency situation in an institution shall be made,
received and investigated in the same manner as other
reports provided for in this article. In the case of a report
regarding an institution, the department shall immediately
cause an investigation of the institution to be conducted.

§9-6-12. Reporting person's immunity from liability.

Any person who in good faith makes or causes to be made
any report permitted or required by this article shall be
immune from any civil or criminal liability which might
otherwise arise solely out of making such report.

§9-6-13. Abrogation of privileged communications.

The privileged status of communications between
husband and wife, and with any person required to make
reports under sections nine or ten of this article, except
communications between an attorney and his client, is
hereby abrogated in circumstances involving suspected or
known abuse or neglect of an incapacitated adult or where
the incapacitated adult is in a known or suspected
emergency situation.

§9-6-14. Failure to report; penalty.

Any person subject to the mandatory reporting
provisions of this article who knowingly fails to make any report required herein or any person who knowingly prevents another person from making such a report is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars or imprisoned in the county jail for not more than ten days, or both fined and imprisoned.

§9-6-15. Abuse or neglect of incapacitated adult; creation of emergency situation; penalties.

(a) Any person having actual care, custody or control of an incapacitated adult who abuses or neglects such adult, or who knowingly permits another person to abuse or neglect or create an emergency situation for an incapacitated adult, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than fifteen hundred dollars, or imprisoned in the county jail for not less than ninety days nor more than one year, or both fined and imprisoned.

(b) Any person having actual care, custody or control of an incapacitated adult who with the intent to abuse or neglect such adult willfully creates an emergency situation for an incapacitated adult, is guilty of a felony, and, upon conviction thereof, shall, in the discretion of the court, be confined in the penitentiary for not less than two nor more than ten years or be confined in the county jail for not more than twelve months and fined not more than fifteen hundred dollars.

(c) Nothing in this article shall be construed to mean an adult is abused or neglected for the sole reason that his or her independent decision is to rely upon treatment by spiritual means in accordance with the tenets and practices of a recognized church or religious denomination or organization in lieu of medical treatment. No person shall be found guilty of the offenses set forth in this section and section fourteen of this article solely for the reason that he or she relies upon treatment by spiritual means in accordance with the tenets and practices of a recognized church or religious denomination or organization in lieu of medical treatment: Provided, That nothing in this section shall limit the right of any person to utilize the remedies provided in this article or elsewhere in law to afford
protection to an incapacitated adult in the care, custody or control of another person which other person refuses to provide medical treatment solely for the reason that such other person relies upon treatment by spiritual means in accordance with the tenets and practices of a recognized church or religious denomination or organization in lieu of medical treatment, unless such incapacitated adult shall, by his or her independent decision, rely upon such treatment by spiritual means.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within............................this the....30......

day of.............................., 1981.

Governor