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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984



ENROLLED
Committee Substitute for
SENATE BILL NO. 351

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



PASSED *March 8,* 1984

In Effect *ninty days from* Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 351

(MR. MCGRAW, MR. PRESIDENT, MR. CRAIGO, MR. ROGERS, MR. HECK, MR. BURDETTE, MR. ASH, MR. TUCKER, MR. HOLLIDAY, MR. NELSON, MR. STACY, MR. DAVIS, MR. CHAFIN, MS. CHACE AND MS. LUCHT, *original sponsors*)

[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.

ju 1 The following words and terms, when used in this article,
id 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 (i) the 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)
13 the unlawful expenditure or willful dissipation of the funds
14 or 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
19 to sustaining life and reasonable health;

20 (5) "Emergency" or "emergency situation" shall mean a
21 situation or set of circumstances which presents a
22 substantial and immediate risk of death or serious injury to
23 an 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 human services the system of adult
3 protective services heretofore existing. The commissioner
4 shall by regulation prescribe the organization and duties of
5 and procedures which shall be used by the department to
6 effectuate the purposes of this article, which regulations
7 may be amended and supplemented from time to time. The
8 commissioner shall design and arrange such regulations to
9 attain, or move toward the attainment of the following
10 goals, to the extent that the commissioner believes feasible
11 under the provisions of this article within the state
12 appropriations and other funds available:

13 (1) Assisting adults who are abused, neglected or
14 incapacitated in achieving or maintaining self-sufficiency
15 and self-support, and preventing, reducing and eliminating
16 their dependency on the state;

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

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

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

26 (5) Providing services and monitoring to adults in
27 institutions designed to assist adults in returning to
28 community settings.

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

§9-6-5. Emergency immediate remedial treatment; procedure.

1 Whenever a circuit court shall find in an action to abate
2 an emergency situation that there is probable cause to
3 believe that an incapacitated adult is in an emergency
4 situation, and that the person or persons having the
5 immediate care, custody and control of such incapacitated
6 adult refuses to take necessary steps to alleviate such
7 emergency, or that such incapacitated adult is without the
8 actual care, custody and control of any persons, it may issue
9 an order of attachment for such incapacitated adult and
10 direct that the peace officer executing the same deliver such
11 incapacitated adult in his custody to a hospital or other safe
12 place except a jail, for immediate remedial treatment to
13 reduce or avoid the risk of death or serious injury. In the
14 event that an order of attachment is issued pursuant to this
15 section, any peace officer executing the order, and such
16 employees of the department the peace officer directs to
17 accompany him, may enter into the place of abode to
18 remove such incapacitated person, notwithstanding the
19 residence therein of other persons.

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

29 Immediately upon delivery of any incapacitated person to
30 such hospital or other safe place, such officer or employee
31 shall apply to the circuit court for and the court shall
32 appoint, and in the case of an attachment the court shall
33 contemporaneously with its issuance appoint, a guardian
34 ad litem who shall not be an employee of the state, nor be an
35 interested party nor be selected by nor in the employ of any
36 interested party, to represent the interests of such
37 incapacitated adult, and the court shall fix a time, not later
38 than one judicial day later, to determine if such remedial
39 treatment shall continue or such incapacitated adult should
40 be released. A copy of that attachment and notice of such

41 hearing shall be served on any person in whose actual care,
42 custody and control such incapacitated adult is found. If
43 further remedial treatment is required, application shall be
44 promptly made to the county commission or such other
45 proper tribunal for appropriate relief: *Provided*, That the
46 commitment for further remedial treatment may be
47 continued until proceedings for such appropriate relief be
48 concluded: *Provided, however*, That application for release
49 from such remedial treatment may be made and granted at
50 any time that the emergency ceases.

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

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

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

§9-6-8. Confidentiality of records.

1 Except as otherwise provided in this section, all records
2 of the department and all protective services agencies
3 concerning an adult under this article shall be confidential
4 and shall not be released, except in accordance with the
5 provisions of section eleven of this article.

6 Unless the adult concerned is receiving adult protective
7 services or unless there are pending proceedings with
8 regard to such adult, the records shall be destroyed two
9 years following their preparation. A circuit court or the
10 supreme court of appeals may subpoena such records, but
11 shall, before permitting their use in connection with any
12 court proceeding, review the same for relevancy and

13 materiality to the issues in the proceeding, and may issue
14 such order to limit the examination and use of such records
15 or any part thereof, having due regard for the purposes of
16 this article and the requirements of the litigation as shall be
17 just.

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

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

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

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

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

§9-6-11. Reporting procedures.

1 A report of neglect or abuse of an incapacitated adult or

2 of an emergency situation involving such an adult shall be
3 made immediately by telephone to the department's local
4 adult protective services agency and shall be followed by a
5 written report within forty-eight hours. The department
6 shall, upon receiving any such report, take such action as
7 may be appropriate and shall maintain a record thereof.
8 The department shall receive such telephonic reports on its
9 twenty-four hour, seven-day-a-week, toll-free number
10 established to receive calls reporting cases of suspected or
11 known adult abuse or neglect.

12 A copy of any report of abuse, neglect or emergency
13 situation shall be made available immediately to the
14 appropriate law-enforcement agency and the prosecuting
15 attorney, or in case of a death, to the appropriate medical
16 examiner or coroner's office: *Provided*, That the
17 department shall omit from such report in the first instance,
18 the name of the person making a report, when requested by
19 such person. Reports of known or suspected institutional
20 abuse or neglect of an incapacitated adult or the existence
21 of an emergency situation in an institution shall be made,
22 received and investigated in the same manner as other
23 reports provided for in this article. In the case of a report
24 regarding an institution, the department shall immediately
25 cause an investigation of the institution to be conducted.

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

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

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

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

§9-6-14. Failure to report; penalty.

1 Any person subject to the mandatory reporting

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

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

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

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

19 (c) Nothing in this article shall be construed to mean an
20 adult is abused or neglected for the sole reason that his or
21 her independent decision is to rely upon treatment by
22 spiritual means in accordance with the tenets and practices
23 of a recognized church or religious denomination or
24 organization in lieu of medical treatment. No person shall
25 be found guilty of the offenses set forth in this section and
26 section fourteen of this article solely for the reason that he
27 or she relies upon treatment by spiritual means in
28 accordancce with the tenets and practices of a recognized
29 church or religious denomination or organization in lieu of
30 medical treatment: *Provided*, That nothing in this section
31 shall limit the right of any person to utilize the remedies
32 provided in this article or elsewhere in law to afford

33 protection to an incapacitated adult in the care, custody or
34 control of another person which other person refuses to
35 provide medical treatment solely for the reason that such
36 other person relies upon treatment by spiritual means in
37 accordance with the tenets and practices of a recognized
38 church or religious denomination or organization in lieu of
39 medical treatment, unless such incapacitated adult shall,
40 by his or her independent decision, rely upon such
41 treatment by spiritual means.

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

Harold E. Eshen
.....
Chairman Senate Committee

Donald Anello
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Judd C. Smith
.....
Clerk of the Senate

Donald L. Dugg
.....
Clerk of the House of Delegates

Walter P. McLean
.....
President of the Senate

W. M. Lee, Jr.
.....
Speaker House of Delegates

The within *is approved* this the *30*
day of *March*, 1984.

John R. Rhymer
.....
Governor

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