



Senate

General Assembly

File No. 516

January Session, 2001

Substitute Senate Bill No. 1341

Senate, April 30, 2001

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING PATIENT AND RESIDENT ABUSE IN HEALTH CARE FACILITIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) As used in sections 1 to 4, inclusive, of this act,
2 section 17b-451 of the general statutes, as amended by this act, and
3 sections 6 and 7 of this act:

4 (1) "Resident" means any person who resides in a care facility.

5 (2) "Patient" means any person who receives treatment from a care
6 facility.

7 (3) "Care facility" means any hospital, skilled nursing facility,
8 intermediate care facility, chronic and convalescent care facility, rest
9 home, care facility for the mentally retarded, psychiatric facility,
10 rehabilitation facility, kidney disease treatment center, home health
11 agency, ambulatory surgical or out-patient facility, home for the aged
12 or disabled, group home, adult foster care home, private home that

13 provides personal, sheltered or nursing care for one or more persons,
14 adult day care center and any other health or resident care related
15 facility or home, whether publicly or privately funded.

16 (4) "Abuse" means any act or omission that causes, or is likely to
17 cause, harm to a resident or patient, including, but not limited to:

18 (A) Any assault, as defined in sections 53a-59 to 53a-61a, inclusive,
19 of the general statutes;

20 (B) A pattern of conduct that causes, or that is likely to cause,
21 physical injury or serious physical injury to a patient or resident,
22 except when such conduct is a part of the treatment and care and in
23 furtherance of the health and safety of the patient or resident;

24 (C) A pattern of conduct that causes, or is likely to cause,
25 psychological injury to a patient or resident, except when such conduct
26 is a part of the treatment and care, and in furtherance of the health and
27 safety of the patient or resident;

28 (D) The failure to provide treatment, care, goods or services
29 necessary to the health, safety or welfare of a patient or resident; or

30 (E) The use of a physical or chemical restraint, medication or
31 isolation as punishment, out of convenience, as a substitute for
32 treatment, in conflict with a physician's order or in quantities that
33 preclude or inhibit the effective care of a patient or resident.

34 (5) "Knowingly" means "knowingly", as defined in subdivision (12)
35 of section 53a-3 of the general statutes.

36 (6) "Recklessly" means "recklessly", as defined in subdivision (13) of
37 section 53a-3 of the general statutes.

38 (7) "Physical injury" means impairment of physical condition or
39 pain.

40 (8) "Psychological injury" means psychological harm that causes
41 mental or emotional incapacitation resulting in severe physical
42 symptoms that require psychological or psychiatric care.

43 (9) "Serious physical injury" means physical injury which creates a
44 substantial risk of death, or which causes serious disfigurement,
45 serious impairment of health or serious loss or impairment of the
46 function of any bodily organ.

47 (10) "Person" means any natural person, corporation, partnership,
48 limited liability company, unincorporated association, other business
49 entity or labor organization.

50 Sec. 2. (NEW) (a) A person is guilty of patient or resident abuse in
51 the first degree when such person knowingly commits abuse of a
52 patient or resident and causes serious physical injury to such patient or
53 resident.

54 (b) Patient or resident abuse in the first degree is a class B felony.

55 Sec. 3. (NEW) (a) A person is guilty of patient or resident abuse in
56 the second degree when such person: (1) Knowingly commits abuse of
57 a patient or resident and causes physical injury or psychological injury
58 to such patient or resident, or (2) recklessly commits abuse of a patient
59 or resident and causes serious physical injury to such patient or
60 resident.

61 (b) Patient or resident abuse in the second degree is a class C felony.

62 Sec. 4. (NEW) (a) A person is guilty of patient or resident abuse in
63 the third degree when such person recklessly commits abuse of a
64 patient or resident and causes physical injury or psychological injury
65 to such patient or resident.

66 (b) Patient or resident abuse in the third degree is a class D felony.

67 Sec. 5. Section 17b-451 of the general statutes is repealed and the
68 following is substituted in lieu thereof:

69 (a) Any physician or surgeon licensed under the provisions of
70 chapter 370, any resident physician or intern in any hospital in this
71 state, whether or not so licensed, any registered nurse, any nursing
72 home administrator, nurse's aide or orderly in a nursing home facility,
73 any person paid for caring for a patient in a nursing home facility, any
74 staff person employed by a nursing home facility, any patients'
75 advocate and any licensed practical nurse, medical examiner, dentist,
76 optometrist, chiropractor, podiatrist, social worker, clergyman, police
77 officer, pharmacist, psychologist or physical therapist, who has
78 reasonable cause to suspect or believe that any elderly person has been
79 abused, neglected, exploited or abandoned, or is in a condition which
80 is the result of such abuse, neglect, exploitation or abandonment, or
81 who is in need of protective services, shall within five calendar days
82 report such information or cause a report to be made in any reasonable
83 manner to the Commissioner of Social Services or to the person or
84 persons designated by the commissioner to receive such reports. [Any
85 person required to report under the provisions of this section who fails
86 to make such report shall be fined not more than five hundred dollars.]
87 The Commissioner of Social Services shall report such information
88 within five calendar days to any authorized representative of the Chief
89 State's Attorney.

90 (b) Such report shall contain the name and address of the involved
91 elderly person, information regarding the nature and extent of the
92 abuse, neglect, exploitation or abandonment, and any other
93 information [which] that the reporter believes might be helpful in an
94 investigation of the case and the protection of such elderly person.

95 (c) Any other person having reasonable cause to believe that an
96 elderly person is being, or has been, abused, neglected, exploited or
97 abandoned, or who is in need of protective services may report such

98 information in any reasonable manner to the commissioner or [his] the
99 commissioner's designee.

100 (d) Any person who makes any report pursuant to sections 17b-450
101 to 17b-461, inclusive, or who testifies in any administrative or judicial
102 proceeding arising from such report shall be immune from any civil or
103 criminal liability on account of such report or testimony, except for
104 liability for perjury, unless such person acted in bad faith or with
105 malicious purpose.

106 (e) For the purposes of sections 17b-450 to 17b-461, inclusive, the
107 treatment of any elderly person by a Christian Science practitioner, in
108 lieu of treatment by a licensed practitioner of the healing arts, or the
109 refusal of treatment for religious reasons shall not of itself constitute
110 grounds for the implementation of protective services.

111 (f) No person shall terminate, demote, reject for promotion or
112 otherwise punish an employee who, acting in good faith, makes any
113 report pursuant to sections 17b-450 to 17b-461, inclusive, or who
114 testifies in any administrative or judicial proceeding arising from such
115 report, except an employee that abuses, exploits, neglects or abandons
116 a patient or resident.

117 (g) No patient or resident shall be involuntarily transferred or
118 discharged or otherwise punished for making any report pursuant to
119 sections 17b-450 to 17b-461, inclusive, or for testifying in any
120 administrative or judicial proceeding arising from such report.

121 (h) Any person who violates subsection (a) of this section shall be
122 guilty of a class A misdemeanor.

123 Sec. 6. (NEW) (a) No person shall knowingly:

124 (1) Attempt, with or without threats or promises of benefit, to
125 induce a person to fail to report an incident of abuse, as defined in
126 section 1 of this act, exploitation, neglect, abandonment or other

127 criminal offense pursuant to section 17b-451 of the general statutes, as
128 amended by this act;

129 (2) Fail to report an incident of abuse, exploitation, neglect,
130 abandonment or other criminal offense after another person indicates a
131 reliance on such reporting pursuant to section 17b-451 of the general
132 statutes, as amended by this act; or

133 (3) Without authorization, alter, destroy or render unavailable a
134 report made by another person pursuant to section 17b-451 of the
135 general statutes, as amended by this act.

136 (b) A violation of this section shall be a class B misdemeanor.

137 Sec. 7. (NEW) (a) For purposes of this section, "license" means a
138 license, certification or permit to engage in a profession or occupation
139 regulated pursuant to the general statutes and "licensing authority"
140 means any board, commission, department or official with authority to
141 issue a license.

142 (b) Whenever a person holding a license is convicted of a violation
143 of section 2, 3, 4 or 6 of this act or section 17b-451 of the general
144 statutes, as amended by this act, the clerk of the court shall transmit a
145 certificate of conviction to the appropriate licensing authority.

146 (c) The licensing authority shall suspend or revoke the license of
147 such person for any period or permanently revoke the license of such
148 person, except that: (1) In the case of a person convicted of a violation
149 of section 2, 3 or 4 of this act, the period of suspension shall be not less
150 than three years, (2) in the case of a person convicted of a violation of
151 section 17b-451 of the general statutes, as amended by this act, the
152 period of suspension shall be not less than one year, and (3) in the case
153 of a person convicted of a violation of section 6 of this act, the period of
154 suspension shall be not less than six months.

155 (d) Each care facility, as defined in section 1 of this act, shall post in

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Uncertain, Potential Cost, Minimal Cost, Potential Minimal Revenue Gain

Affected Agencies: Judicial Department, Various Criminal Justice Agencies, Department of Public Health

Municipal Impact: None

Explanation

State Impact:

The bill results in a potential cost to various criminal justice agencies, a potential minimal revenue gain to the state, an uncertain impact on the Judicial Department, and an uncertain and minimal cost impact on the Department of Public Health (DPH).

Criminal Justice Agencies

The bill creates new categories of crime for abuse of patients and residents in various care facilities and increases certain other penalties. Under current law, some of the offenses described by the bill could be prosecuted under a range of other statutes. However, the conduct covered by the bill's penalties is broader than that which is subject to criminal penalties under current law. In addition, the bill's penalties are generally higher than under current law. The extent to which offenses under the bill would occur is unknown, but is not anticipated

to be significant. As a result, the bill could result in additional workload to criminal justice agencies and additional costs for probation, incarceration and alternative incarceration programs. Any increase in revenue from additional and higher fines would be minimal.

Judicial Department

The bill requires the clerk of the court to transmit a certificate of conviction to the appropriate licensing authority when someone who holds a license is convicted of one of the listed offenses in the bill. The court files available to clerks may or may not contain information relating to the occupation or licenses that may be held by defendants. It is uncertain how the agency would obtain such information for transmittal.

Department of Public Health

The bill requires licensing agencies to suspend or revoke the license of persons convicted of patient and resident abuse upon receiving notice from superior court clerks. While various agencies issue licenses that would be subject to the terms of the bill, it is anticipated that the vast majority of convicted persons will hold licenses issued by the Department of Public Health (DPH). The agency will be able to fulfill this responsibility within its anticipated budgetary resources.

It also requires persons providing services in care facilities to sign a form acknowledging their legal obligation to report suspected abuse, neglect, exploitation or abandonment of a patient. DPH will incur a minimal cost, which can be accommodated within the agency's anticipated budgetary resources, to develop the form and distribute it to facilities under its regulatory jurisdiction. However, many care facilities named in the bill are not regulated by DPH (e.g., homes for the aged or disabled, group homes, adult foster care homes, private homes providing care, adult day care centers, care facilities for the

mentally retarded). Therefore, it appears that DPH will not have legal authority to uniformly enforce provisions within Section 7 (d) of the bill.

The agency will experience a workload increase to the extent that any resulting complaints prompt investigation and disciplinary action by DPH staff. A revenue gain to the state could also occur from the collection of civil penalties.

OLR BILL ANALYSIS

sSB 1341

AN ACT CONCERNING PATIENT AND RESIDENT ABUSE IN HEALTH CARE FACILITIES.**SUMMARY:**

This bill creates a new category of crime: first- through third-degree abuse of a patient or resident in a wide range of care facilities. It subjects people, corporations, various other business entities, and labor organizations convicted of this crime to specified criminal penalties. It defines abuse and related terms for this purpose.

The bill also (1) increases the penalty for mandated elder abuse reporters who fail to report suspected abuse; (2) requires the social services commissioner to forward elder abuse reports to the chief state's attorney's office; (3) prohibits reprisals against employees, patients, or residents who report elder abuse; (4) makes it a misdemeanor to interfere with other people's abuse reports; (5) requires care facilities to post certain notices and their employees to sign notification documents concerning abuse reporting; (6) specifies that refusing medical treatment for religious reasons is not grounds for implementing protective services for an elderly person; (7) requires suspension or revocation of licenses for people or entities convicted of patient or resident abuse, failure to report, or other actions related to reporting; and (8) makes people who recklessly engage in certain activities guilty of the crime of cruelty to persons, while exempting those who act negligently.

EFFECTIVE DATE: October 1, 2001

PATIENT AND RESIDENT ABUSE CRIMES***Care Facility***

Under the bill, a "care facility" is a hospital; skilled nursing facility; intermediate care facility; chronic and convalescent care facility; rest

home; care facility for the mentally retarded; psychiatric facility; rehabilitation facility; kidney disease treatment center; home health agency; ambulatory surgical or outpatient facility; home for the aged or disabled; group home; adult foster care home; private home that provides personal, sheltered, or nursing care for one or more people; adult day care center; and any other publicly or privately funded health or resident care related facility or home.

Abuse Defined

For its purposes, the bill defines “abuse” as any act or omission that harms or is likely to harm a resident or patient, including:

1. any assault as defined in statute;
2. a pattern of conduct that causes, or is likely to cause, a patient or resident physical or psychological injury, except when the conduct is part of the treatment and care and furthers the individual’s health and safety;
3. failure to provide treatment, care, goods, or services needed for the individual’s health, safety, or welfare; or
4. use of a physical or chemical restraint, medication, or isolation as punishment, out of convenience, or as a substitute for treatment, in conflict with a physician’s orders or in quantities that preclude or inhibit effective care.

The bill applies this definition of abuse not only to its own provisions but also to another statute concerning elder abuse reporting. But another law already describes abuse for elder reporting purposes somewhat differently. This existing law requires abuse to be willful while the bill's otherwise more specific definition does not.

Types of Abuse Crimes

The bill makes a person who engages in certain activities guilty of patient or resident abuse crimes. It defines “person” for this purpose as any individual, corporation, partnership, limited liability company, unincorporated association, other business entity, or labor

organization.

The bill categorizes these patient or resident abuse crimes as follows:

1. knowingly committing abuse and causing serious physical injury is patient or resident abuse in the first degree (a class B felony-see BACKGROUND);
2. knowingly committing abuse and causing physical or psychological injury or recklessly committing abuse and causing serious physical injury is patient or resident abuse in the second degree (a class C felony); and
3. recklessly committing abuse and causing physical or psychological injury is patient or resident abuse in the third degree (a class D felony).

Under the bill and existing law, a person acts (1) knowingly with respect to conduct or a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that the circumstance exists and (2) “recklessly” with respect to a result or a circumstance when he is aware of and consciously disregards a substantial and unjustifiable risk that such a result will occur or that such a circumstance exists. The risk must be of a kind and a degree that disregarding it is a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

The bill further defines (1) “physical injury” as impairment of physical condition or pain; (2) “psychological injury” as psychological harm that causes mental or emotional incapacitation resulting in severe physical symptoms that require psychological or psychiatric care; and (3) “serious physical injury” as physical injury that creates a substantial risk of death or causes serious disfigurement, serious impairment of health, or serious loss or impairment of a bodily organ’s function.

ELDER ABUSE REPORTING

Mandated Reporters

The law requires certain types of people to report elder abuse and related crimes against people age 60 or older. The bill increases the penalty for any such reporter who fails to report suspected abuse, neglect, exploitation, or abandonment. The bill makes this failure a class A misdemeanor, which can result in imprisonment for up to one year, a fine of up to \$2,000, or both. Current law subjects them only to a \$500 fine. Mandated reporters include such professionals as physicians, nurses, nursing home administrators and staff, nurse's aides, patients' advocates, other medical and dental practitioners, social workers, clergymen, police officers, and pharmacists.

Elder Abuse Reports

Current law gives the mandated reporter five days to report the suspected abuse to the social services commissioner. The bill, additionally, requires the commissioner to report this information, within five days of receiving it, to the chief state's attorney's authorized representative. (The Chief State's Attorney's Office recently established an elder abuse unit to prosecute crimes against the elderly.)

Employment Protection for Elder Abuse Reporters

The bill prohibits anyone from firing, demoting, rejecting for promotion, or otherwise punishing an employee who, in good faith, reports elder abuse or testifies in any administrative or judicial proceeding arising from the report. But the bill specifies that it does not protect the employee who abuses a patient or resident.

Protection of Patients and Residents Making Abuse Reports

The bill prohibits any involuntary discharge, transfer, or other punishment of patients or residents who report elder abuse or testify in a proceeding arising out of the report.

Offenses Involving Other People's Reports

The bill prohibits anyone from knowingly:

1. attempting to induce a person not to report an abuse incident or other criminal offense, with or without threats or promises;

2. failing to report an incident after another person indicates a reliance on such reporting; or
3. altering, destroying, or making unavailable someone else's report without authorization.

The bill makes such an offense a class B misdemeanor.

Notice

The bill requires each care facility to post the elder abuse reporting requirement in a prominent location. It also requires the facility's employees, owners, operators, and health care providers to sign a form prescribed by the Department of Public Health acknowledging the requirement. It requires the facility to keep all these forms and imposes a civil penalty of up to \$7,500 on any facility that violates the provisions on notice, signing of acknowledgements, and maintenance of forms.

Refusal of Treatment for Religious Reasons

Under the bill, an elderly person's refusal of treatment for religious reasons is not of itself grounds for implementing protective services for the person through the Department of Social Services' Elderly Protective Services Unit.

LICENSE SUSPENSION OR REVOCATION

Whenever someone holding a license, certification, or permit to engage in a profession or occupation regulated under state law is convicted of a violation under this bill, the bill requires the court clerk to transmit a certificate of conviction to the appropriate authority that issued the credential. The bill requires the authority to suspend or revoke the person's credential. A suspension cannot be for less than:

1. three years for someone convicted of any degree of patient and resident abuse;
2. one year for failing to report abuse or for reprisals against

employees, patients, or residents who report abuse or testify in abuse proceedings; and

3. six months for someone who attempts to induce another person not to make a report; fails to report when someone else indicates that he is relying on such reporting; or alters, destroys or makes other people's reports unavailable.

CRUELTY TO PERSONS

The bill also changes the cruelty to persons provision in another general statute. It makes recklessness, rather than negligence, one component of the crime. Current law imposes a \$500 fine, one year in prison, or both on anyone who:

1. tortures, torments, cruelly or unlawfully punishes anyone, or willfully or negligently deprives them of necessary food, clothing, shelter, or proper physical care or
2. while having custody or control of a child under age 16, maltreats, tortures, overworks, cruelly or lawfully punishes or willfully or negligently deprives the child of necessary food, clothing, or shelter.

By replacing negligently with recklessly, the bill requires a higher standard before the defendant can be found guilty. Existing statute considers a person to be acting with "criminal negligence" with respect to a result or a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that the circumstance exists. As noted above, a person acts recklessly when he is aware of a substantial and unjustifiable risk and consciously disregards it.

BACKGROUND

Penalties

Penalties for the different classes of crimes referred to in the bill are a term of imprisonment up to a set number of years, a fine up to a specified amount, or both as follows:

| <i>Classification of Crime</i> | <i>Imprisonment</i> | <i>Fine</i> |
|--------------------------------|---------------------|----------------|
| Class B felony | 1 to 20 years | Up to \$15,000 |
| Class C felony | 1 to 10 years | Up to \$10,000 |
| Class D felony | 1 to 5 years | Up to \$5,000 |
| Class A misdemeanor | Up to 1 year | Up to \$2,000 |
| Class B misdemeanor | Up to 6 months | Up to \$1,000 |

COMMITTEE ACTION

Select Committee on Aging

Joint Favorable Substitute Change of Reference

Yea 12 Nay 0

Judiciary Committee

Joint Favorable Substitute

Yea 27 Nay 11