



# Senate

General Assembly

**File No. 294**

January Session, 2015

Substitute Senate Bill No. 896

*Senate, March 30, 2015*

The Committee on Human Services reported through SEN. MOORE, M. of the 22nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING PROTECTIVE SERVICES FOR SUSPECTED ELDERLY ABUSE VICTIMS.***

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

1 Section 1. Section 17b-450 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2015*):

3 For purposes of sections 17b-450 to 17b-461, inclusive, and section 9  
4 of this act:

5 [(1) The term "elderly person" means any resident of Connecticut  
6 who is sixty years of age or older.

7 (2) An elderly person shall be deemed to be "in need of protective  
8 services" if such person is unable to perform or obtain services which  
9 are necessary to maintain physical and mental health.

10 (3) The term "services which are necessary to maintain physical and  
11 mental health" includes, but is not limited to, the provision of medical  
12 care for physical and mental health needs, the relocation of an elderly

13 person to a facility or institution able to offer such care, assistance in  
14 personal hygiene, food, clothing, adequately heated and ventilated  
15 shelter, protection from health and safety hazards, protection from  
16 maltreatment the result of which includes, but is not limited to,  
17 malnutrition, deprivation of necessities or physical punishment, and  
18 transportation necessary to secure any of the above stated needs,  
19 except that this term shall not include taking such person into custody  
20 without consent except as provided in sections 17b-450 to 17b-461,  
21 inclusive.

22 (4) The term "protective services" means services provided by the  
23 state or other governmental or private organizations or individuals  
24 which are necessary to prevent abuse, neglect, exploitation or  
25 abandonment. Abuse includes, but is not limited to, the wilful  
26 infliction of physical pain, injury or mental anguish, or the wilful  
27 deprivation by a caretaker of services which are necessary to maintain  
28 physical and mental health. Neglect refers to an elderly person who is  
29 either living alone and not able to provide for himself or herself the  
30 services which are necessary to maintain physical and mental health or  
31 is not receiving such necessary services from the responsible caretaker.  
32 Exploitation refers to the act or process of taking advantage of an  
33 elderly person by another person or caretaker whether for monetary,  
34 personal or other benefit, gain or profit. Abandonment refers to the  
35 desertion or wilful forsaking of an elderly person by a caretaker or the  
36 foregoing of duties or the withdrawal or neglect of duties and  
37 obligations owed an elderly person by a caretaker or other person.

38 (5) The term "caretaker" means a person who has the responsibility  
39 for the care of an elderly person as a result of family relationship or  
40 who has assumed the responsibility for the care of the elderly  
41 voluntarily, by contract or by order of a court of competent  
42 jurisdiction.]

43 (1) "Abuse" includes, but is not limited to, the wilful infliction of  
44 physical pain, injury or mental anguish, or the wilful deprivation by a  
45 caregiver of services that are necessary to maintain physical and

46 mental health;

47 (2) "Abandonment" means the desertion of an elderly person by a  
48 caregiver or the foregoing of duties or the withdrawal or neglect of  
49 duties and obligations owed an elderly person by a caregiver or other  
50 person;

51 (3) "Caregiver" means a person who has the responsibility for the  
52 care of an elderly person as a result of family relationship or who has  
53 assumed the responsibility for the care of the elderly person  
54 voluntarily, by contract or by order of a court of competent  
55 jurisdiction;

56 (4) "Commissioner" means the Commissioner of Social Services or  
57 other persons assigned by the commissioner to work on protective  
58 services matters;

59 (5) "Elderly person" means a person who is sixty years of age or  
60 older;

61 (6) "Exploitation" means the act or process of taking advantage of an  
62 elderly person by another person or caregiver whether for monetary,  
63 personal or other benefit, gain or profit;

64 (7) "In need of protective services" means that the elderly person is  
65 unable to perform or obtain services that are necessary to maintain  
66 physical and mental health;

67 (8) "Neglect" means the inability of an elderly person to provide for  
68 himself or herself the services that are necessary to maintain physical  
69 and mental health or the unwillingness or inability of a caregiver to  
70 provide such necessary services to an elderly person;

71 (9) "Legal representative" means an attorney, guardian ad litem,  
72 conservator or power of attorney appointed to act on the elderly  
73 person's behalf;

74 (10) "Protective services" means services provided by the state, other

75 governmental or private organizations or individuals that are  
76 necessary to prevent abuse, neglect, exploitation or abandonment;

77 (11) "Services that are necessary to maintain physical and mental  
78 health" include, but are not limited to, (A) the provision of medical  
79 care to an elderly person in order to meet such person's physical and  
80 mental health needs, (B) the relocation of an elderly person to a facility  
81 or institution able to offer such care, (C) assistance in personal hygiene,  
82 (D) food, clothing, adequately heated and ventilated shelter, (E)  
83 protection from health and safety hazards, (F) protection from  
84 maltreatment the result of which includes, but is not limited to,  
85 malnutrition, deprivation of necessities or physical punishment, and  
86 (G) transportation necessary to secure such physical and mental health  
87 needs. "Services that are necessary to maintain physical and mental  
88 health" do not include taking such person into custody without  
89 consent except as provided in this section and sections 17b-451 to 17b-  
90 461, inclusive.

91 Sec. 2. Section 17b-452 of the general statutes is repealed and the  
92 following is substituted in lieu thereof (*Effective July 1, 2015*):

93 (a) The commissioner upon receiving a report that an elderly person  
94 allegedly is being, or has been, abused, neglected, exploited or  
95 abandoned, or is in need of protective services shall investigate the  
96 report to determine [the situation relative to] the condition of the  
97 elderly person and what action and services, if any, are required. The  
98 investigation shall include (1) [a] an in-person visit to the named  
99 elderly person, (2) consultation with those individuals having  
100 knowledge of the facts of the particular case, and (3) an interview with  
101 the elderly person alone unless (A) the elderly person refuses to  
102 consent to such interview, [(B) a physician, having examined the  
103 elderly person not more than thirty days prior to or after the date on  
104 which the commissioner receives such report, provides a written letter  
105 stating that in the opinion of the physician an interview with the  
106 elderly person alone is medically contraindicated, or (C)] or (B) the  
107 commissioner determines that such interview is not in the best

108 interests of the elderly person. If the commissioner determines that a  
109 [caretaker] caregiver is interfering with the commissioner's ability to  
110 conduct an interview alone with the elderly person, the commissioner  
111 may bring an action in the Superior Court or Probate Court seeking an  
112 order enjoining such [caretaker] caregiver from interfering with the  
113 commissioner's ability to conduct an interview alone with the elderly  
114 person. In investigating a report under this subsection, the  
115 commissioner may subpoena witnesses, take testimony under oath  
116 and compel the production of any necessary and relevant documents  
117 necessary to investigate the allegations of abuse, neglect, exploitation  
118 or abandonment. The commissioner may request the Attorney General  
119 to petition the Superior Court for such order as may be appropriate to  
120 enforce the provisions of this section. Upon completion of the  
121 investigation, [written findings shall be prepared which] the  
122 commissioner shall prepare written findings that shall include  
123 recommended action and a determination of whether protective  
124 services are needed. [The person filing the report shall be notified of  
125 the findings, upon request.]

126 (b) The Department of Social Services shall maintain a state-wide  
127 registry of the number of reports received, the [investigation]  
128 allegations and [findings and the actions taken] the outcomes.

129 (c) The [client's file] elderly person's file, including, but not limited  
130 to, the original report and the investigation report shall not be deemed  
131 a public [records] record nor be subject to the provisions of section 1-  
132 210. [The name of the person making the original report or any person  
133 mentioned in such report shall not be disclosed unless the person  
134 making the original report specifically requests such disclosure or  
135 unless a judicial proceeding results therefrom or unless disclosure of  
136 the name of the elderly person about whom the report was made is  
137 required to fully investigate a report.] The commissioner may disclose  
138 the elderly person's file, in whole or in part, to an individual, agency,  
139 corporation or organization only with the written authorization of the  
140 elderly person, the elderly person's legal representative or as provided  
141 by this section.

142 (d) Notwithstanding the provisions of subsection (c) of this section,  
143 if the commissioner determines it to be necessary to assure the health,  
144 safety and welfare of an elderly person, the commissioner may disclose  
145 the elderly person's records, whether or not created by the department,  
146 and not otherwise privileged or confidential communications under  
147 state or federal law, without the authorization of the elderly person or  
148 the elderly person's legal representative (1) to multidisciplinary teams  
149 that may be formed to assist the department in investigation,  
150 evaluation or treatment of elderly abuse and neglect cases; (2) to law  
151 enforcement officials; and (3) in proceedings authorized under this  
152 chapter or in any action the commissioner deems necessary to assure  
153 the health, safety and welfare of any elderly person.

154 (e) Notwithstanding the provisions of subsections (c) and (d) of this  
155 section, the commissioner shall not disclose the name of a person who  
156 reported suspected abuse, neglect, exploitation or abandonment of an  
157 elderly person except with that person's written permission or to a law  
158 enforcement official pursuant to a court order that specifically requires  
159 such disclosure.

160 (f) The elderly person or his or her legal representative or attorney  
161 shall have the right of access to records made, maintained or kept on  
162 file by the department, in accordance with all applicable state and  
163 federal law, when those records pertain to or contain information or  
164 material concerning the elderly person, including, but not limited to,  
165 records concerning investigations, reports or medical, psychological or  
166 psychiatric examinations of the elderly person except: (1) If protected  
167 health information were obtained by the department from someone  
168 other than a health care provider under the promise of confidentiality  
169 and the access requested would be reasonably likely to reveal the  
170 source of the information; (2) that information identifying the  
171 individual who reported the abuse, neglect, exploitation or  
172 abandonment of the elderly person shall not be released unless, upon  
173 application to the Superior Court by the elderly person and served on  
174 the Commissioner of Social Services, a judge determines, after in  
175 camera inspection of relevant records and a hearing, that there is

176 reasonable cause to believe the reporter knowingly made a false report  
177 or that other interests of justice require such release; (3) if it is  
178 determined by a licensed health care professional that the access  
179 requested is reasonably likely to endanger the life or physical safety of  
180 the elderly person or another person; (4) if the protected health  
181 information makes reference to another person, other than a health  
182 care provider, and a licensed health care professional has determined,  
183 in the exercise of professional judgment, that the access requested is  
184 reasonably likely to cause substantial harm to such other person; or (5)  
185 the request for access is made by the elderly person's legal  
186 representative, and a licensed health care professional has determined,  
187 in the exercise of professional judgment, that the provision of access to  
188 such legal representative is reasonably likely to cause harm to the  
189 elderly person or another person.

190 Sec. 3. Section 17b-453 of the general statutes is repealed and the  
191 following is substituted in lieu thereof (*Effective July 1, 2015*):

192 (a) If it is determined that an elderly person is in need of protective  
193 services, services shall be initiated, provided the elderly person  
194 consents. If the elderly person fails to consent and the [protective  
195 services staff of the Department of Social Services] commissioner has  
196 reason to believe that such elderly person is incapable of managing his  
197 personal or financial affairs, the [protective services staff]  
198 commissioner shall provide protective services to the extent possible  
199 and may apply to Probate Court for the appointment of a conservator  
200 of person or estate, as appropriate.

201 (b) If the [caretaker] caregiver of an elderly person who has  
202 consented to the receipt of reasonable and necessary protective  
203 services refuses to allow the provision of such services to such elderly  
204 person, the [Commissioner of Social Services] commissioner may  
205 petition the Superior Court or the Probate Court for an order enjoining  
206 the [caretaker] caregiver from interfering with the provision of  
207 protective services to the elderly person. The petition shall allege  
208 specific facts sufficient to show that the elderly person is in need of

209 protective services and consents to their provision and that the  
210 [caretaker] caregiver refuses to allow the provision of such services. If  
211 the judge finds that the elderly person is in need of such services and  
212 has been prevented by the [caretaker] caregiver from receiving the  
213 same, the judge may issue an order enjoining the [caretaker] caregiver  
214 from interfering with the provision of protective services to the elderly  
215 person.

216 Sec. 4. Section 17b-454 of the general statutes is repealed and the  
217 following is substituted in lieu thereof (*Effective July 1, 2015*):

218 [Any person, department, agency or commission authorized to  
219 carry out the duties enumerated in sections 17b-450 to 17b-461,  
220 inclusive, shall have access to all relevant records, except that records  
221 which are confidential to an elderly person shall only be divulged with  
222 the written consent of the elderly person or the representative of such  
223 elderly person.] A covered entity, as defined in 45 CFR 160.103, shall  
224 disclose to the commissioner all relevant protected health information  
225 and other information about an elderly person that is necessary for the  
226 commissioner to investigate an allegation of abuse, neglect,  
227 exploitation or abandonment, provided the covered entity shall  
228 provide notice to such elderly person in accordance with subsection (c)  
229 of 45 CFR 164.512. If the [Commissioner of Social Services]  
230 commissioner has reasonable cause to believe that the elderly person  
231 [lacks capacity to give consent to release confidential records or if the  
232 caretaker of such elderly person is refusing consent and the  
233 commissioner has reasonable cause to believe that such caretaker has]  
234 is being abused, neglected, exploited or abandoned, [the elderly  
235 person,] the commissioner may issue a subpoena to obtain  
236 [confidential records] protected health information or other  
237 information necessary to investigate the allegations of abuse, neglect,  
238 exploitation or abandonment. The commissioner may request the  
239 Attorney General to petition the Superior Court for such order as may  
240 be appropriate to enforce the provisions of this section. The  
241 commissioner's authority [of the Department of Social Services] shall  
242 include, but shall not be limited to, the right to initiate or otherwise

243 take those actions necessary to assure the health, safety and welfare of  
244 any elderly person, [, subject to any specific requirement for individual  
245 consent, and the right to authorize the transfer of an elderly person  
246 from a nursing home.]

247 Sec. 5. Section 17b-455 of the general statutes is repealed and the  
248 following is substituted in lieu thereof (*Effective July 1, 2015*):

249 If an elderly person does not consent to the receipt of reasonable  
250 and necessary protective services, or if such person withdraws the  
251 consent, such services shall not be provided or continued, except that if  
252 the [Commissioner of Social Services] commissioner has reason to  
253 believe that such elderly person lacks capacity to consent, [he] the  
254 commissioner may seek court authorization to provide necessary  
255 services, as provided in section 17b-456, as amended by this act.

256 Sec. 6. Section 17b-456 of the general statutes is repealed and the  
257 following is substituted in lieu thereof (*Effective July 1, 2015*):

258 (a) If the Commissioner of Social Services finds that an elderly  
259 person is being abused, neglected, exploited or abandoned and lacks  
260 capacity to consent to reasonable and necessary protective services,  
261 [he] the commissioner may petition the Probate Court for appointment  
262 of a conservator of the elderly person pursuant to the provisions of  
263 sections 45a-644 to 45a-662, inclusive, in order to obtain such consent.

264 (b) Such elderly person or the individual, agency or organization  
265 designated to be responsible for the personal welfare of the elderly  
266 person shall have the right to bring a motion in the cause for review of  
267 the Probate Court's determination regarding the elderly person's  
268 capacity or an order issued pursuant to sections 17b-450 to 17b-461,  
269 inclusive, as amended by this act.

270 (c) The Probate Court may appoint [, if it deems appropriate,] the  
271 Commissioner of Social Services to be the conservator of the person of  
272 such elderly person pursuant to the provisions of section 45a-651.

273 (d) In any proceeding in Probate Court pursuant to the provisions of

274 sections 17b-450 to 17b-461, inclusive, as amended by this act, the  
275 Probate Court shall appoint an attorney to represent the elderly person  
276 if he or she is without other legal representation.

277 Sec. 7. Section 17b-459 of the general statutes is repealed and the  
278 following is substituted in lieu thereof (*Effective July 1, 2015*):

279 Concurrent with the implementation of any protective services, an  
280 evaluation shall be undertaken by the Department of Social Services,  
281 pursuant to regulations [which] that shall be adopted by the  
282 Commissioner of Social Services, in accordance with chapter 54,  
283 regarding the elderly person's financial capability for paying for the  
284 protective services. If the elderly person is so able, procedures for the  
285 reimbursement for the costs of providing the needed protective  
286 services shall be initiated. If it is determined that the elderly person is  
287 not financially capable of paying for such needed services, the services  
288 shall be provided in accordance with policies and procedures  
289 established by the Commissioner of Social Services for the provision of  
290 welfare benefits under such circumstances.

291 Sec. 8. Section 17b-460 of the general statutes is repealed and the  
292 following is substituted in lieu thereof (*Effective July 1, 2015*):

293 If, as a result of any investigation initiated under the provisions of  
294 sections 17b-450 to 17b-461, inclusive, as amended by this act, a  
295 determination is made that a [caretaker] caregiver or other person has  
296 abused, neglected, exploited or abandoned an elderly person, such  
297 information shall be referred in writing to the Chief State's Attorney or  
298 the Chief State's Attorney's designee who shall conduct such further  
299 investigation, if any, as deemed necessary and shall determine  
300 whether criminal proceedings should be initiated against such  
301 [caretaker] caregiver or other person, in accordance with applicable  
302 state law.

303 Sec. 9 (NEW) (*Effective July 1, 2015*) (a) The Commissioner of Social  
304 Services may apply to the Probate Court for an order to enter the  
305 premises of an elderly person for purposes of an assessment when the

306 commissioner has reasonable cause to believe that the elderly person  
307 may be in need of protective services and is refused access by the  
308 elderly person or another individual.

309 (b) The commissioner shall document in the Department of Social  
310 Service's investigation file the factors considered when making the  
311 decision about whether to apply for an order to enter the premises.

312 (c) The commissioner shall state in the application for an order to  
313 enter the premises that the order is being sought solely for the purpose  
314 of assessing whether the elderly person is in need of protective services  
315 and shall include, to the extent the facts can be ascertained with  
316 reasonable diligence, the following information:

317 (1) The name and address of the elderly person who may be in need  
318 of protective services and the premises on which this person may be  
319 found, if different;

320 (2) The reason for the belief that the elderly person may be in need  
321 of protective services, which may include information provided by  
322 other agencies or individuals who are familiar with the elderly person;

323 (3) The name and address, if known, of the individual or individuals  
324 who are responsible for preventing access to the elderly person;

325 (4) Previous efforts that have been made to enter the premises of the  
326 elderly person who may need protective services;

327 (5) The names of any individuals, such as the department's social  
328 worker, and any other health or mental health professionals, who may  
329 participate in the assessment of whether the elderly person needs  
330 protective services;

331 (6) The manner by which the assessment will be conducted; and

332 (7) Whether there has been a prior application to the Probate Court  
333 to enter the premises of the elderly person, or for any similar relief,  
334 and, if so, the determination of such application, and new facts, if any,

335 that were not in the previous application, which support submission of  
336 another application.

337 (d) Any allegations of abuse, neglect, exploitation or abandonment  
338 that are not based on the commissioner's personal knowledge shall be  
339 based on the personal knowledge of the person reporting the abuse,  
340 neglect, exploitation or abandonment or the personal knowledge of  
341 any other person who has information relating to the report. Whenever  
342 possible, the allegations that are not based on the commissioner's  
343 knowledge shall be supported by an affidavit of the person having  
344 such knowledge and shall be attached to the application.

345 (e) The applications authorized in this section shall take precedence  
346 over all other causes in the Probate Court, except for other causes that  
347 may take precedence as provided in the general statutes.

348 (f) If the Probate Court is satisfied that (1) there is reasonable cause  
349 to believe that an elderly person in need of protective services may be  
350 found at the premises described in the application, (2) such person  
351 may be in need of protective services, and (3) access to such person has  
352 been refused, it shall grant the application and issue an order  
353 authorizing the commissioner, accompanied by a police officer or other  
354 law enforcement official, and any other person the commissioner  
355 determines necessary, to enter the premises to conduct an assessment  
356 to determine whether the elderly person named in the application is in  
357 need of protective services.

358 (g) The provisions of this section shall not be construed to authorize  
359 the commissioner to remove any person from the premises described  
360 in the application, or to provide any involuntary protective services to  
361 any person, other than to assess an elderly person's need for protective  
362 services. Nothing in this section shall be construed to impair any  
363 existing right or remedy under law for any person subject to the  
364 provisions of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2015</i>	17b-450
Sec. 2	<i>July 1, 2015</i>	17b-452
Sec. 3	<i>July 1, 2015</i>	17b-453
Sec. 4	<i>July 1, 2015</i>	17b-454
Sec. 5	<i>July 1, 2015</i>	17b-455
Sec. 6	<i>July 1, 2015</i>	17b-456
Sec. 7	<i>July 1, 2015</i>	17b-459
Sec. 8	<i>July 1, 2015</i>	17b-460
Sec. 9	<i>July 1, 2015</i>	New section

**HS**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note******State Impact:*** None***Municipal Impact:*** None***Explanation***

There is no fiscal impact to the Department of Social Services (DSS) related to assessing an elderly person's need for protective services under certain circumstances.

***The Out Years******State Impact:*** None***Municipal Impact:*** None

**OLR Bill Analysis****sSB 896*****AN ACT CONCERNING PROTECTIVE SERVICES FOR SUSPECTED ELDERLY ABUSE VICTIMS.*****SUMMARY:**

This bill allows the Department of Social Services (DSS) to apply to the probate court for an order to enter an elderly person's premises to conduct an assessment if (1) DSS has reasonable cause to believe the elderly person may need protective services and (2) the elderly person or another individual has refused DSS access to the premises.

DSS must include certain information in its investigation file and its application to the probate court. The court must give DSS' application precedence over other claims and grant the application if it finds certain conditions are met.

The bill changes several provisions on access to and disclosure of information during and after DSS investigations. The bill:

1. broadens DSS' ability to issue subpoenas when investigating allegations of abuse, neglect, exploitation, or abandonment of an elderly person;
2. narrows the circumstances under which DSS may disclose the name of the person reporting such abuse, neglect, exploitation, or abandonment;
3. establishes circumstances when DSS may disclose an elderly person's file, both with and without authorization from the elderly person or his or her legal representative; and
4. allows an elderly person or his or her legal representative access to DSS records pertaining to the elderly person, with certain

exceptions.

The bill removes DSS' explicit right to authorize the transfer of an elderly person from a nursing home, but retains its general authority to take necessary actions to assure the health, safety, and welfare of an elderly person.

The bill also alters the definition of neglect for purposes of DSS investigations and services. Under current law, neglect refers to an elderly person (1) living alone and not able to provide for himself or herself the services necessary to maintain physical and mental health or (2) not receiving such services from a responsible caretaker. The bill broadens the first definition by including elderly people who do not live alone. The bill specifies in the second definition that neglect is the unwillingness or inability of a caretaker to provide such services to an elderly person.

Finally, the bill also makes technical and conforming changes.

EFFECTIVE DATE: July 1, 2015

## **PROBATE COURT ORDERS**

Under the bill, probate court orders allowing DSS to enter an elderly person's premises only authorize DSS to assess the elderly person's need for protective services. Such orders do not authorize DSS to remove a person from his or her premises or provide involuntary protective services. The bill specifies that its provisions pertaining to such court orders do not impair any existing legal right or remedy.

### ***DSS Application***

The bill requires DSS to document in its investigation file factors it considers when deciding to apply for a court order to enter an elderly person's premises.

For purposes of applications for an order, the bill requires that allegations of abuse, neglect, exploitation, or abandonment be based on the personal knowledge of (1) the DSS commissioner; (2) the person

reporting the abuse, neglect, exploitation, or abandonment; or (3) any other person with information relating to the report. Under the bill, allegations not based on the commissioner's knowledge must be supported whenever possible by an affidavit attached to DSS' application.

Under the bill, DSS must also include the following information in its application:

1. a statement affirming that DSS seeks the order solely to assess whether the elderly person needs protective services;
2. the elderly person's name and address and the premises where he or she can be found, if different from his or her address;
3. the reason to believe the elderly person may be in need of protective services, which may include information provided by other agencies or individuals familiar with the elderly person;
4. the name and address, if known, of any individuals responsible for preventing access to the elderly person;
5. previous efforts made to enter the elderly person's premises;
6. names of any other individuals (e.g., DSS social worker) and any other health or mental health professionals who may participate in the assessment of the elderly person;
7. the manner in which DSS will conduct the assessment; and
8. whether there has been any prior application to the probate court to enter the elderly person's premises or for similar relief, and if so, the court's ruling on the application and any new facts that support submission of another application.

### ***Probate Court Determinations***

Under the bill, DSS' applications take precedence over all other causes in the probate court, except for those that by law take

precedence.

Under the bill, the probate court must grant DSS' application if it finds (1) reasonable cause to believe an elderly person who needs protective services may be found at the premises described in the application, (2) such elderly person may need protective services, and (3) access to such person has been refused. Upon granting the application, the court must issue an order authorizing DSS, accompanied by a police officer or other law enforcement official and other necessary individuals, to enter the premises to conduct an assessment to determine if the elderly person named in the application needs protective services.

## **DSS INVESTIGATIONS OF ALLEGATIONS**

### ***DSS Access to Records***

The bill requires covered entities (e.g., health care providers and others as defined by the federal Health Insurance Portability and Accountability Act (HIPAA)) to disclose to DSS all relevant information, including protected health information necessary for DSS to investigate an allegation of abuse, neglect, exploitation, or abandonment. Covered entities must provide notice to the elderly person in accordance with HIPAA requirements (SEE BACKGROUND).

Under current law, any person, department, agency, or commission authorized by law to provide protective services for the elderly has access to all relevant records, except those confidential to an elderly person, which may only be divulged with the written consent of the elderly person or his or her representative. The bill eliminates that provision and broadens the circumstances under which DSS may issue a subpoena. Under current law, DSS may issue a subpoena to obtain confidential records if it has reasonable cause to believe (1) the elderly person lacks capacity to consent to the release of such records or (2) in cases when the person's caretaker refuses consent, the person's caretaker has abused, neglected, exploited or abandoned the person. Under the bill, DSS may issue a subpoena for information, including

protected health information, whenever it has reasonable cause to believe the elderly person is being abused, neglected, exploited, or abandoned.

### ***Interview Requirement During Investigation***

By law, DSS must investigate any report it receives alleging (1) abuse, neglect, exploitation, or abandonment of an elderly person or (2) an elderly person's need for protective services. Among other things, the investigation must include an interview with the elderly person alone, unless (1) the elderly person refuses to consent to such an interview or (2) DSS determines that the interview is not in the elderly person's best interest. The bill eliminates a third exception to this requirement, when a physician (1) has examined the elderly person within 30 days before or after DSS receives a report and (2) provides a letter stating his or her opinion that an interview with the elderly person alone is medically contraindicated.

### ***Notice of Findings***

The bill eliminates a requirement that DSS notify the person who filed the report of the findings of DSS' investigation upon the person's request.

### ***Registry***

Current law requires DSS to maintain a statewide registry of reports received, investigations, findings, and actions taken. The bill instead requires the registry to contain the number of reports received, the allegations, and outcomes.

## **DSS DISCLOSURE OF RECORDS**

### ***Elderly Person's File***

By law, the elderly person's file, which includes the original report and DSS' investigation report, is not a public record, and is not subject to the state's Freedom of Information Act. The bill allows DSS to disclose the file with written authorization from the elderly person or his or her legal representative, defined in the bill as an attorney, guardian ad litem, conservator, or power of attorney, appointed to act

on the elderly person's behalf. With such authorization, DSS may disclose the file or any portion of the file, to (1) an individual, (2) an agency, (3) a corporation, or (4) an organization.

Under the bill, without authorization from the elderly person or his or her legal representative, DSS may disclose the elderly person's records if (1) DSS determines disclosure is necessary to assure the elderly person's health, safety, and welfare and (2) the records are not otherwise privileged or confidential communications under state or federal law. In such situations, DSS may disclose the records (1) to multidisciplinary teams formed to assist DSS with investigations, evaluations, or treatment in elderly abuse and neglect cases; (2) to law enforcement officials; and (3) in other proceedings related to protective services for the elderly and other actions the DSS commissioner deems necessary to assure an elderly person's health, safety, and welfare.

### ***Name of Person Filing Report***

The bill narrows the circumstances in which DSS may disclose the name of the person who reported suspected elderly abuse, neglect, exploitation, or abandonment. Under current law, DSS may not disclose such a person's name unless (1) the person specifically requests disclosure, (2) a judicial proceeding results from the report, or (3) disclosure of the elderly person's name is necessary to fully investigate the report. Under the bill, DSS may only disclose a reporting person's name (1) with the person's written permission or (2) to a law enforcement official under a court order specifically requiring such a disclosure.

### **ACCESS TO DSS RECORDS**

Under the bill, with certain exceptions, an elderly person or his or her legal representative has the right, in accordance with applicable state and federal law, to access records made, kept, or maintained by DSS that pertain to or contain information or material concerning the elderly person. Such information includes (1) records concerning investigations; (2) reports; and (3) the elderly person's medical, psychological, or psychiatric examinations.

The bill creates certain exceptions. Under the bill, the right to access records is limited if:

1. DSS obtained protected health information from someone other than a health care provider under promise of confidentiality and the requested access would likely reveal the information's source;
2. a licensed health care professional determines that the requested access is reasonably likely to endanger the life or physical safety of the elderly person or another person;
3. the protected health information refers to another person, other than a health care provider, and a licensed health care professional using professional judgment determines the requested access is reasonably likely to cause that person substantial harm; or
4. the person's legal representative makes the request for access and a licensed health care professional using professional judgment determines that providing access to the legal representative is reasonably likely to cause harm to the elderly person or another person.

The bill also prohibits releasing information identifying the individual who reported the abuse, neglect, exploitation, or abandonment to the elderly person or his or her legal representative, unless the elderly person (1) applies to the Superior Court; (2) serves the DSS commissioner; and (3) a judge determines, after in camera inspection (i.e., in private or not in open court) of relevant records and a hearing, there is reasonable cause to believe the reporter knowingly made a false report or that other interests of justice require such a release.

## **NURSING HOME TRANSFERS**

By law, and under the bill, DSS may take necessary actions to assure the health, safety, and welfare of any elderly person. The bill removes

DSS' explicit right to authorize transfer of an elderly person from a nursing home. By law, the public health commissioner may transfer a nursing home patient if she determines there is imminent danger to the patient's health, safety, or welfare (CGS § 19a-534).

## **BACKGROUND**

### **HIPAA**

The HIPAA "privacy rule" sets national standards to protect the privacy of health information. Among other things, it limits the circumstances when health care providers, insurers, and other covered entities may release protected health information (PHI). PHI includes information that could identify a person, including name, social security number, telephone number, medical record number, and ZIP code.

Federal law generally allows covered entities to disclose to a government authority, PHI regarding an individual they believe to be a victim of abuse, neglect, or domestic violence. The entity must promptly inform the individual unless it would (1) place the individual at risk of serious harm or (2) inform a personal representative who the entity believes is responsible for the abuse, neglect, or other injury and is not in the individual's best interest.

### **Related Bills**

sSB 1005, File 201, reported favorably by the Aging Committee, (1) alters the definition of exploitation and (2) expands penalties for exploiting an elderly person.

## **COMMITTEE ACTION**

Human Services Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/12/2015)