



General Assembly

January Session, 2015

Raised Bill No. 896

LCO No. 3379



Referred to Committee on HUMAN SERVICES

Introduced by:
(HS)

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 Section 17b-450 of the general statutes is repealed and the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" includes, but is not limited to, (A) the provision of medical care
79 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" does 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 in the elderly person's best
144 interest, the commissioner may disclose the elderly person's records,
145 whether or not created by the department, and not otherwise
146 privileged or confidential communications under state or federal law,
147 without the authorization of the elderly person or the elderly person's
148 legal representative (1) to multidisciplinary teams that may be formed
149 to assist the department in investigation, evaluation or treatment of
150 elderly abuse and neglect cases; (2) to law enforcement officials; and
151 (3) in proceedings authorized under this chapter or in any action the
152 commissioner deems necessary to assure the health, safety and welfare
153 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, abandonment or exploitation 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 abandonment or exploitation. If the [Commissioner of Social Services]
228 commissioner has reasonable cause to believe that the elderly person
229 [lacks capacity to give consent to release confidential records or if the
230 caretaker of such elderly person is refusing consent and the
231 commissioner has reasonable cause to believe that such caretaker has]
232 is being abused, neglected, exploited or abandoned, [the elderly
233 person,] the commissioner may issue a subpoena to obtain
234 [confidential records] protected health information or other
235 information necessary to investigate the allegations of abuse, neglect,

236 exploitation or abandonment. The commissioner may request the
237 Attorney General to petition the Superior Court for such order as may
238 be appropriate to enforce the provisions of this section. The
239 commissioner's authority [of the Department of Social Services] shall
240 include, but not be limited to, the right to initiate or otherwise take
241 those actions necessary to assure the health, safety and welfare of any
242 elderly person. [, subject to any specific requirement for individual
243 consent, and the right to authorize the transfer of an elderly person
244 from a nursing home.]

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

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

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

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

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

267 inclusive, as amended by this act.

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

271 (d) In any proceeding in Probate Court pursuant to the provisions of
272 sections 17b-450 to 17b-461, inclusive, as amended by this act, the
273 Probate Court shall appoint an attorney to represent the elderly person
274 if he or she is without other legal representation.

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

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

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

291 If, as a result of any investigation initiated under the provisions of
292 sections 17b-450 to 17b-461, inclusive, as amended by this act, a
293 determination is made that a [caretaker] caregiver or other person has
294 abused, neglected, exploited or abandoned an elderly person, such
295 information shall be referred in writing to the Chief State's Attorney or
296 the Chief State's Attorney's designee who shall conduct such further

297 investigation, if any, as deemed necessary and shall determine
298 whether criminal proceedings should be initiated against such
299 [caretaker] caregiver or other person, in accordance with applicable
300 state law.

301 Sec. 9 (NEW) (*Effective July 1, 2015*) (a) The Commissioner of Social
302 Services may apply to the Probate Court for an order to enter the
303 premises of an elderly person for purposes of an assessment when the
304 commissioner has reasonable cause to believe that the elderly person
305 may be in need of protective services and is refused access by the
306 elderly person or another individual.

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

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

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

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

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

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

325 (5) The names of any individuals, such as the department's social

326 worker, and any other health or mental health professionals, who may
327 participate in the assessment of whether the elderly person needs
328 protective services;

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

330 (7) Whether there has been a prior application to the Probate Court
331 to enter the premises of the elderly person, or for any similar relief,
332 and, if so, the determination of such application, and new facts, if any,
333 that were not in the previous application, which support submission of
334 another application.

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

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

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

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

Statement of Purpose:

To allow for quicker provision of protective services for suspected elderly abuse victims.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]