



General Assembly

Amendment

January Session, 2015

LCO No. 7823



Offered by:

SEN. MOORE, 22nd Dist.
REP. ABERCROMBIE, 83rd Dist.
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To: Subst. Senate Bill No. 896

File No. 294

Cal. No. 223

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

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

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 Section 17b-450 of the general statutes is repealed and the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

5 For purposes of sections 17b-450 to 17b-461, inclusive:

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

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

11 (3) The term "services which are necessary to maintain physical and
12 mental health" includes, but is not limited to: [,] (A) [the] The provision
13 of medical care for physical and mental health needs, (B) the relocation
14 of an elderly person to a facility or institution able to offer such care,
15 (C) assistance in personal hygiene, food, clothing, adequately heated
16 and ventilated shelter, (D) protection from health and safety hazards,
17 (E) protection from [maltreatment the result of which includes, but is
18 not limited to, malnutrition, deprivation of necessities or physical
19 punishment] abuse, neglect, exploitation or abandonment, and (F)
20 transportation necessary to secure any of the above stated needs,
21 except that this term shall not include taking such person into custody
22 without consent except as provided in sections 17b-450 to 17b-461,
23 inclusive.

24 (4) The term "protective services" means services provided by the
25 state or other governmental or private organizations or individuals
26 which are necessary to prevent abuse, neglect, exploitation or
27 abandonment.

28 [Abuse] (5) The term "abuse" includes, but is not limited to, the
29 wilful infliction of physical pain, injury or mental anguish, or the
30 wilful deprivation by a [caretaker] caregiver of services which are
31 necessary to maintain physical and mental health.

32 [Neglect] (6) The term "neglect" refers to the failure or inability of an
33 elderly person [who is either living alone and not able] to provide for
34 himself or herself the services which are necessary to maintain physical
35 and mental health or [is not receiving such necessary services from the
36 responsible caretaker] the failure to provide or arrange for provision of
37 such necessary services by a caregiver.

38 [Exploitation] (7) The term "exploitation" refers to the act or process
39 of taking advantage of an elderly person by another person or
40 [caretaker] caregiver whether for monetary, personal or other benefit,
41 gain or profit.

42 [Abandonment] (8) The term "abandonment" refers to the desertion
43 or wilful forsaking of an elderly person by a [caretaker] caregiver or
44 the foregoing of duties or the withdrawal or neglect of duties and
45 obligations owed an elderly person by a [caretaker] caregiver or other
46 person.

47 [(5)] (9) The term ["caretaker"] "caregiver" means a person who has
48 the responsibility for the care of an elderly person as a result of family
49 relationship or who has assumed the responsibility for the care of the
50 elderly person voluntarily, by contract or by order of a court of
51 competent jurisdiction.

52 (10) The term "legal representative" means a guardian of a person
53 with intellectual disability, conservator or power of attorney appointed
54 to act on the elderly person's behalf.

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

57 (a) The commissioner upon receiving a report that an elderly person
58 allegedly is being, or has been, abused, neglected, exploited or
59 abandoned, or is in need of protective services shall investigate the
60 report to determine [the situation relative to] the condition of the
61 elderly person and what action and services, if any, are required. The
62 investigation shall include (1) [a] an in-person visit to the named
63 elderly person, (2) consultation with those individuals having
64 knowledge of the facts of the particular case, and (3) an interview with
65 the elderly person alone unless (A) the elderly person refuses to
66 consent to such interview, [(B) a physician, having examined the
67 elderly person not more than thirty days prior to or after the date on
68 which the commissioner receives such report, provides a written letter
69 stating that in the opinion of the physician an interview with the
70 elderly person alone is medically contraindicated, or (C)] or (B) the
71 commissioner determines that such interview is not in the best
72 interests of the elderly person. If the commissioner determines that a
73 [caretaker] caregiver is interfering with the commissioner's ability to

74 conduct an interview alone with the elderly person, the commissioner
75 may bring an action in the Superior Court or Probate Court seeking an
76 order enjoining such [caretaker] caregiver from interfering with the
77 commissioner's ability to conduct an interview alone with the elderly
78 person. In investigating a report under this subsection, the
79 commissioner may subpoena witnesses, take testimony under oath
80 and compel the production of any necessary and relevant documents
81 necessary to investigate the allegations of abuse, neglect, exploitation
82 or abandonment. The commissioner may request the Attorney General
83 to petition the Superior Court for such order as may be appropriate to
84 enforce the provisions of this section. Upon completion of the
85 investigation, [written findings shall be prepared which] the
86 commissioner shall prepare written findings that shall include
87 recommended action and a determination of whether protective
88 services are needed. [The person filing the report shall be notified of
89 the findings, upon request.]

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

93 (c) The [client's file] elderly person's file, including, but not limited
94 to, the original report and the investigation report shall not be deemed
95 a public [records] record nor be subject to the provisions of section 1-
96 210. [The name of the person making the original report or any person
97 mentioned in such report shall not be disclosed unless the person
98 making the original report specifically requests such disclosure or
99 unless a judicial proceeding results therefrom or unless disclosure of
100 the name of the elderly person about whom the report was made is
101 required to fully investigate a report.] The commissioner may disclose
102 the elderly person's file, in whole or in part, to an individual, agency,
103 corporation or organization only with the written authorization of the
104 elderly person, the elderly person's legal representative or as provided
105 by this section.

106 (d) Notwithstanding the provisions of subsection (c) of this section,

107 if the commissioner determines it to be necessary to assure the health,
108 safety and welfare of an elderly person, the commissioner may disclose
109 the elderly person's records, whether or not created by the department,
110 and not otherwise privileged or confidential communications under
111 state or federal law, without the authorization of the elderly person or
112 the elderly person's legal representative (1) to multidisciplinary teams
113 that may be formed to assist the department in investigation,
114 evaluation or treatment of elderly abuse and neglect cases; (2) to law
115 enforcement officials; and (3) in proceedings authorized under this
116 chapter or in any action the commissioner deems necessary to assure
117 the health, safety and welfare of any elderly person.

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

124 (f) The elderly person or his or her legal representative or attorney
125 shall have the right of access to records made, maintained or kept on
126 file by the department, in accordance with all applicable state and
127 federal law, when those records pertain to or contain information or
128 material concerning the elderly person, including, but not limited to,
129 records concerning investigations, reports or medical, psychological or
130 psychiatric examinations of the elderly person except: (1) If protected
131 health information were obtained by the department from someone
132 other than a health care provider under the promise of confidentiality
133 and the access requested would be reasonably likely to reveal the
134 source of the information; (2) that information identifying the
135 individual who reported the abuse, neglect, exploitation or
136 abandonment of the elderly person shall not be released unless, upon
137 application to the Superior Court by the elderly person and served on
138 the Commissioner of Social Services, a judge determines, after in
139 camera inspection of relevant records and a hearing, that there is

140 reasonable cause to believe the reporter knowingly made a false report
141 or that other interests of justice require such release; (3) if it is
142 determined by a licensed health care professional that the access
143 requested is reasonably likely to endanger the life or physical safety of
144 the elderly person or another person; (4) if the protected health
145 information makes reference to another person, other than a health
146 care provider, and a licensed health care professional has determined,
147 in the exercise of professional judgment, that the access requested is
148 reasonably likely to cause substantial harm to such other person; or (5)
149 the request for access is made by the elderly person's legal
150 representative, and a licensed health care professional has determined,
151 in the exercise of professional judgment, that the provision of access to
152 such legal representative is reasonably likely to cause harm to the
153 elderly person or another person.

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

156 (a) If it is determined that an elderly person is in need of protective
157 services, services shall be initiated, provided the elderly person
158 consents. If the elderly person fails to consent and the [protective
159 services staff of the Department of Social Services] commissioner has
160 reason to believe that such elderly person is incapable of managing his
161 personal or financial affairs, the [protective services staff]
162 commissioner shall provide protective services to the extent possible
163 and may apply to Probate Court for the appointment of a conservator
164 of person or estate, as appropriate.

165 (b) If the [caretaker] caregiver of an elderly person who has
166 consented to the receipt of reasonable and necessary protective
167 services refuses to allow the provision of such services to such elderly
168 person, the [Commissioner of Social Services] commissioner may
169 petition the Superior Court or the Probate Court for an order enjoining
170 the [caretaker] caregiver from interfering with the provision of
171 protective services to the elderly person. The petition shall allege
172 specific facts sufficient to show that the elderly person is in need of

173 protective services and consents to their provision and that the
174 [caretaker] caregiver refuses to allow the provision of such services. If
175 the judge finds that the elderly person is in need of such services and
176 has been prevented by the [caretaker] caregiver from receiving the
177 same, the judge may issue an order enjoining the [caretaker] caregiver
178 from interfering with the provision of protective services to the elderly
179 person.

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

182 [Any person, department, agency or commission authorized to
183 carry out the duties enumerated in sections 17b-450 to 17b-461,
184 inclusive, shall have access to all relevant records, except that records
185 which are confidential to an elderly person shall only be divulged with
186 the written consent of the elderly person or the representative of such
187 elderly person.] A covered entity, as defined in 45 CFR 160.103, shall
188 disclose to the commissioner all relevant protected health information
189 and other information about an elderly person that is necessary for the
190 commissioner to investigate an allegation of abuse, neglect,
191 exploitation or abandonment, provided the covered entity shall
192 provide notice to such elderly person in accordance with subsection (c)
193 of 45 CFR 164.512. If the [Commissioner of Social Services]
194 commissioner has reasonable cause to believe that the elderly person
195 [lacks capacity to give consent to release confidential records or if the
196 caretaker of such elderly person is refusing consent and the
197 commissioner has reasonable cause to believe that such caretaker has]
198 is being abused, neglected, exploited or abandoned, [the elderly
199 person,] the commissioner may issue a subpoena to obtain
200 [confidential records] protected health information or other
201 information necessary to investigate the allegations of abuse, neglect,
202 exploitation or abandonment. The commissioner may request the
203 Attorney General to petition the Superior Court for such order as may
204 be appropriate to enforce the provisions of this section. The
205 commissioner's authority [of the Department of Social Services] shall

206 include, but shall not be limited to, the right to initiate or otherwise
207 take those actions necessary to assure the health, safety and welfare of
208 any elderly person. [, subject to any specific requirement for individual
209 consent, and the right to authorize the transfer of an elderly person
210 from a nursing home.]

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

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

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

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

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

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

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

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

243 Concurrent with the implementation of any protective services, an
244 evaluation shall be undertaken by the Department of Social Services,
245 pursuant to regulations [which] that shall be adopted by the
246 Commissioner of Social Services, in accordance with chapter 54,
247 regarding the elderly person's financial capability for paying for the
248 protective services. If the elderly person is so able, procedures for the
249 reimbursement for the costs of providing the needed protective
250 services shall be initiated. If it is determined that the elderly person is
251 not financially capable of paying for such needed services, the services
252 shall be provided in accordance with policies and procedures
253 established by the Commissioner of Social Services for the provision of
254 welfare benefits under such circumstances.

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

257 If, as a result of any investigation initiated under the provisions of
258 sections 17b-450 to 17b-461, inclusive, as amended by this act, a
259 determination is made that a [caretaker] caregiver or other person has
260 abused, neglected, exploited or abandoned an elderly person, such
261 information shall be referred in writing to the Chief State's Attorney or
262 the Chief State's Attorney's designee who shall conduct such further
263 investigation, if any, as deemed necessary and shall determine
264 whether criminal proceedings should be initiated against such
265 [caretaker] caregiver or other person, in accordance with applicable
266 state law.

267 Sec. 9. (NEW) (*Effective July 1, 2015*) (a) The Commissioner of Social

268 Services may petition the Probate Court for an order to enter the
269 premises of an elderly person for purposes of an assessment when the
270 commissioner has reasonable cause to believe that the elderly person
271 may be in need of protective services and is refused access by the
272 elderly person or another individual.

273 (b) The commissioner shall document in the Department of Social
274 Service's investigation file the factors considered when making the
275 decision about whether to petition for an order to enter the premises.

276 (c) The commissioner shall state in the petition for an order to enter
277 the premises that the order is being sought solely for the purpose of
278 assessing whether the elderly person is in need of protective services
279 and shall include, to the extent the facts can be ascertained with
280 reasonable diligence, the following information:

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

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

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

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

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

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

296 (7) Whether there has been a prior petition to the Probate Court to
297 enter the premises of the elderly person, or for any similar relief, and,
298 if so, the determination of such petition, and new facts, if any, that
299 were not in the previous petition, which support submission of
300 another petition.

301 (d) Any allegations of abuse, neglect, exploitation or abandonment
302 that are not based on the commissioner's personal knowledge shall be
303 based on the personal knowledge of the person reporting the abuse,
304 neglect, exploitation or abandonment or the personal knowledge of
305 any other person who has information relating to the report. Whenever
306 possible, the allegations that are not based on the commissioner's
307 knowledge shall be supported by an affidavit under penalty of perjury
308 of the person having such knowledge and shall be attached to the
309 petition.

310 (e) If the Probate Court finds that (1) there is reasonable cause to
311 believe that an elderly person is at risk of imminent physical or mental
312 harm and may be found at the premises described in the petition, (2)
313 such person may be in need of protective services, and (3) access to
314 such person has been refused, the court shall grant the petition and
315 issue an order, ex parte and without prior notice, authorizing the
316 commissioner, accompanied by a police officer or other law
317 enforcement official, and any other person the commissioner
318 determines necessary to enter the premises to conduct an assessment
319 to determine whether the elderly person named in the petition is in
320 need of protective services. The ex parte order shall expire ten days
321 after the order is issued.

322 (f) The provisions of this section shall not be construed to authorize
323 the commissioner to remove any person from the premises described
324 in the petition, or to provide any involuntary protective services to any
325 person, other than to assess an elderly person's need for protective
326 services. Nothing in this section shall be construed to impair any
327 existing right or remedy under law for any person subject to the
328 provisions of this section."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 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