

5680

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I N A S S E M B L Y

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Introduced by M. of A. BRENNAN, PHEFFER, ROBINSON, ORTIZ, J. RIVERA, JOHN, CASTRO, JAFFEE, ABBATE, DenDEKKER, COLTON -- Multi-Sponsored by -- M. of A. ALFANO, CHRISTENSEN, DelMONTE, GABRYSZAK, GALEF, KOON, McENENY, PEOPLES, RUSSELL, SWEENEY -- read once and referred to the Committee on Aging

AN ACT to amend the social services law, in relation to elderly abuse protective services and making an appropriation therefor

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Article 5 of the social services law is amended by adding a
2 new title 9 to read as follows:

3 TITLE 9

4 ELDERLY ABUSE PROTECTIVE ACT

5 SECTION 310. DECLARATION OF PURPOSE.

6 311. DEFINITIONS.

7 312. REPORTING THE POSSIBLE NECESSITY FOR PROTECTIVE SERVICES.

8 313. ACTION ON REPORTS.

9 314. JUDICIAL REVIEW.

10 315. AUTHORITY OF OFFICE OF CHILDREN AND FAMILY SERVICES.

11 316. ASSISTANCE OF OTHER AGENCIES.

12 317. REVIEW.

13 318. COSTS FOR PROVIDING PROTECTIVE SERVICES.

14 319. ABUSE OF DUTIES OF CARETAKER.

15 320. STATEWIDE CENTRAL REGISTER OF ELDERLY ABUSE.

16 S 310. DECLARATION OF PURPOSE. THE LEGISLATURE DECLARES THAT NO ELDER-
17 LY PERSON IN THE STATE SHALL BE SUBJECTED TO ABUSE OR DEPRIVATION.
18 TOWARDS THAT END THE "ELDERLY ABUSE PROTECTIVE ACT" IS ENACTED.

19 S 311. DEFINITIONS. FOR PURPOSES OF THIS TITLE:

20 1. THE TERM "ELDERLY PERSON" MEANS ANY RESIDENT OF THE STATE WHO IS
21 SIXTY-TWO YEARS OF AGE OR OLDER.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD07138-01-9

1 2. AN ELDERLY PERSON SHALL BE DEEMED TO BE "IN NEED OF PROTECTIVE
2 SERVICES" IF SUCH PERSON IS UNABLE TO PERFORM OR OBTAIN SERVICES WHICH
3 ARE NECESSARY TO MAINTAIN PHYSICAL AND MENTAL HEALTH.

4 3. THE TERM "SERVICES WHICH ARE NECESSARY TO MAINTAIN PHYSICAL AND
5 MENTAL HEALTH" INCLUDES, BUT IS NOT LIMITED TO, THE PROVISION OF MEDICAL
6 CARE FOR PHYSICAL AND MENTAL HEALTH NEEDS, THE RELOCATION OF AN ELDERLY
7 PERSON TO A FACILITY OR INSTITUTION ABLE TO OFFER SUCH CARE, ASSISTANCE
8 IN PERSONAL HYGIENE, FOOD, CLOTHING, ADEQUATELY HEATED AND VENTILATED
9 SHELTER, PROTECTION FROM HEALTH AND SAFETY HAZARDS, PROTECTION FROM
10 MALTREATMENT THE RESULT OF WHICH INCLUDES, BUT IS NOT LIMITED TO, MALNU-
11 TRITION, DEPRIVATION OF NECESSITIES OR PHYSICAL PUNISHMENT, AND TRANS-
12 PORTATION NECESSARY TO SECURE ANY OF THE ABOVE STATED NEEDS, EXCEPT THAT
13 THIS TERM SHALL NOT INCLUDE TAKING SUCH PERSON INTO CUSTODY WITHOUT
14 CONSENT EXCEPT AS PROVIDED IN THIS TITLE.

15 4. THE TERM "PROTECTIVE SERVICES" MEANS SERVICES PROVIDED BY THE STATE
16 AS DESCRIBED IN SECTION FOUR HUNDRED SEVENTY-THREE OF THIS CHAPTER,
17 WHICH ARE NECESSARY TO PREVENT ABUSE, NEGLECT, EXPLOITATION OR ABANDON-
18 MENT.

19 5. THE TERM "ABUSE" INCLUDES BUT IS NOT LIMITED TO ANY ACT OR OMISSION
20 WHICH RESULTS IN THE INFLICTION OF PHYSICAL PAIN OR INJURY, OR THE
21 INFLICTION OF MENTAL ANGUISH THAT REQUIRES MEDICAL ATTENTION OR THE
22 DEPRIVATION BY A CARETAKER OF SERVICES WHICH ARE NECESSARY TO MAINTAIN
23 PHYSICAL OR MENTAL HEALTH.

24 6. THE TERM "NEGLECT" REFERS TO AN ELDERLY PERSON WHO IS EITHER LIVING
25 ALONE AND NOT ABLE TO PROVIDE FOR ONESELF THE SERVICES WHICH ARE NECES-
26 SARY TO MAINTAIN PHYSICAL AND MENTAL HEALTH OR IS NOT RECEIVING THE SAID
27 NECESSARY SERVICES FROM THE RESPONSIBLE CARETAKER.

28 7. THE TERM "EXPLOITATION" MEANS INTENTIONAL ECONOMIC EXPLOITATION OF
29 AN ELDERLY PERSON BY MEANS OF THEFT, FRAUD, COERCION OR EXTORTION.

30 8. THE TERM "ABANDONMENT" REFERS TO THE DESERTION OR WILFUL FORSAKING
31 OF AN ELDERLY PERSON BY A CARETAKER OR THE FOREGOING OF DUTIES OR THE
32 WITHDRAWAL OR NEGLECT OF DUTIES AND OBLIGATIONS OWED AN ELDERLY PERSON
33 BY A CARETAKER OR OTHER PERSON.

34 9. THE TERM "CARETAKER" MEANS A PERSON WHO HAS THE RESPONSIBILITY FOR
35 THE CARE OF AN ELDERLY PERSON AS A RESULT OF FAMILY RELATIONSHIP OR WHO
36 HAS ASSUMED THE RESPONSIBILITY FOR THE CARE OF THE ELDERLY VOLUNTARILY,
37 BY CONTRACT OR BY ORDER OF A COURT OF COMPETENT JURISDICTION.

38 S 312. REPORTING THE POSSIBLE NECESSITY FOR PROTECTIVE SERVICES. 1.
39 ANY LICENSED PHYSICIAN OR SURGEON, ANY RESIDENT PHYSICIAN OR INTERN IN
40 ANY HOSPITAL IN THIS STATE, WHETHER OR NOT SO LICENSED, ANY REGISTERED
41 NURSE, ANY ADULT CARE FACILITY ADMINISTRATOR, ANY PERSON PAID FOR CARING
42 FOR A RESIDENT IN AN ADULT CARE FACILITY, ANY STAFF PERSON EMPLOYED BY
43 AN ADULT CARE FACILITY, ANY PATIENT'S ADVOCATE AND ANY LICENSED PRACTI-
44 CAL NURSE, MEDICAL EXAMINER, DENTIST, OSTEOPATH, OPTOMETRIST, CHIROPRA-
45 TOR, PODIATRIST, SOCIAL WORKER, CORONER, CLERGYMAN, PEACE OFFICER, PHAR-
46 MACIST OR PHYSICAL THERAPIST OR ANY ATTORNEY, ACCOUNTANT, TRUSTEE,
47 GUARDIAN, CONSERVATOR OR OTHER PERSON WHO HAS RESPONSIBILITY FOR PREPAR-
48 ING THE TAX RECORDS OF AN ELDERLY PERSON OR A PERSON WHO HAS A FIDUCIARY
49 RESPONSIBILITY FOR ANY OTHER ACTION CONCERNING THE USE OR PRESERVATION
50 OF AN ELDERLY ADULT'S PROPERTY, WHO HAS A REASONABLE BASIS TO BELIEVE
51 THAT ANY ELDERLY PERSON HAS BEEN ABUSED, NEGLECTED, EXPLOITED OR ABAN-
52 DONED, OR IS IN A CONDITION WHICH IS THE RESULT OF SUCH ABUSE, NEGLECT,
53 EXPLOITATION OR ABANDONMENT, OR WHO IS IN NEED OF PROTECTIVE SERVICES,
54 OR ANY ATTORNEY, ACCOUNTANT, TRUSTEE, GUARDIAN, CONSERVATOR OR OTHER
55 PERSON WHO HAS RESPONSIBILITY FOR PREPARING THE TAX RECORDS OF AN ELDER-
56 LY PERSON OR A PERSON WHO HAS A FIDUCIARY RESPONSIBILITY FOR ANY OTHER

1 ACTION CONCERNING THE USE OR RETENTION OF AN ELDERLY ADULT'S PROPERTY
2 WHO HAS A REASONABLE BASIS TO BELIEVE THAT AN ELDERLY ADULT HAS BEEN
3 EXPLOITED, SHALL WITHIN THREE CALENDAR DAYS REPORT SUCH INFORMATION OR
4 CAUSE A REPORT TO BE MADE IN THE FOLLOWING MANNER:

5 (A) IF THE ABUSE HAS OCCURRED IN A LONG-TERM CARE FACILITY, EXCEPT A
6 STATE MENTAL HOSPITAL OR A STATE DEVELOPMENT CENTER, THE REPORT SHALL BE
7 MADE TO THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES;

8 (B) IF THE SUSPECTED OR ALLEGED ABUSE OCCURRED IN A STATE MENTAL
9 HEALTH HOSPITAL OR A STATE DEVELOPMENTAL CENTER, THE REPORT SHALL BE
10 MADE TO THE OFFICE OF MENTAL HEALTH OR THE OFFICE OF MENTAL RETARDATION
11 AND DEVELOPMENTAL DISABILITIES; OR

12 (C) IF THE ABUSE HAS OCCURRED ANY PLACE OTHER THAN ONE DESCRIBED IN
13 PARAGRAPH (A) OR (B) OF THIS SUBDIVISION, THE REPORT SHALL BE MADE TO
14 THE STATEWIDE CENTRAL REGISTRY.

15 ANY PERSON REQUIRED TO REPORT UNDER THE PROVISION OF THIS SECTION WHO
16 FAILS TO MAKE SUCH REPORT MAY BE FINED NOT MORE THAN FIVE HUNDRED
17 DOLLARS.

18 2. SUCH REPORT SHALL CONTAIN THE NAME AND ADDRESS OF THE INVOLVED
19 ELDERLY PERSON, INFORMATION REGARDING THE NATURE AND EXTENT OF THE
20 ABUSE, NEGLECT, EXPLOITATION OR ABANDONMENT, AND ANY OTHER INFORMATION
21 WHICH THE REPORTER BELIEVES MIGHT BE HELPFUL IN AN INVESTIGATION OF THE
22 CASE AND THE PROTECTION OF SUCH ELDERLY PERSON.

23 3. ANY OTHER PERSON HAVING REASONABLE CAUSE TO BELIEVE THAT AN ELDERLY
24 PERSON IS BEING, OR HAS BEEN ABUSED, NEGLECTED, EXPLOITED OR ABANDONED
25 OR WHO IS IN NEED OF PROTECTIVE SERVICES MAY REPORT SUCH INFORMATION IN
26 ANY REASONABLE MANNER TO THE COMMISSIONER OF THE OFFICE OF CHILDREN AND
27 FAMILY SERVICES OR HIS DESIGNEE.

28 4. ANY PERSON WHO MAKES ANY REPORT PURSUANT TO THIS TITLE, OR WHO
29 TESTIFIES IN ANY ADMINISTRATIVE OR JUDICIAL PROCEEDING ARISING FROM SUCH
30 REPORT SHALL BE IMMUNE FROM ANY CIVIL OR CRIMINAL LIABILITY ON ACCOUNT
31 OF SUCH REPORT OR TESTIMONY, EXCEPT FOR LIABILITY FOR PERJURY, UNLESS
32 SUCH PERSON WAS GROSSLY NEGLIGENT OR ACTED IN BAD FAITH OR WITH MALI-
33 CIOUS PURPOSE.

34 5. ANY PHYSICIAN, SURGEON, OR PSYCHOTHERAPIST SHALL NOT BE REQUIRED TO
35 FILE A REPORT PURSUANT TO THIS SECTION IF ALL THE FOLLOWING CONDITIONS
36 ARE MET:

37 (A) SUCH PHYSICIAN, SURGEON, OR PSYCHOTHERAPIST HAS BEEN TOLD BY AN
38 ELDER OR DEPENDENT ADULT THAT HE OR SHE HAS EXPERIENCED BEHAVIOR CONSTI-
39 TUTING PHYSICAL ABUSE, ABANDONMENT, ISOLATION, FINANCIAL ABUSE, OR
40 NEGLECT;

41 (B) SUCH PHYSICIAN, SURGEON, OR PSYCHOTHERAPIST IS NOT AWARE OF ANY
42 INDEPENDENT EVIDENCE THAT CORROBORATES THE STATEMENT THAT ABUSE HAS
43 OCCURRED;

44 (C) THE ELDER OR DEPENDENT ADULT HAS BEEN DIAGNOSED WITH A MENTAL
45 ILLNESS OR DEMENTIA, OR IS THE SUBJECT OF A COURT ORDERED CONSERVATOR-
46 SHIP BECAUSE OF MENTAL ILLNESS OR DEMENTIA; AND

47 (D) IN THE EXERCISE OF CLINICAL JUDGMENT, SUCH PHYSICIAN, SURGEON, OR
48 PSYCHOTHERAPIST REASONABLY BELIEVES THAT SUCH ABUSE DID NOT OCCUR.

49 6. IN A LONG-TERM CARE FACILITY, A PERSON WHO OTHERWISE WOULD HAVE
50 BEEN REQUIRED TO REPORT ABUSE PURSUANT TO THIS SECTION, SHALL NOT BE
51 REQUIRED TO FILE A REPORT IF THE FOLLOWING CONDITIONS ARE MET:

52 (A) SUCH PERSON IS AWARE THAT THERE IS A PROPER PLAN OF CARE;

53 (B) SUCH PERSON IS AWARE THAT THE PLAN OF CARE WAS PROPERLY PROVIDED
54 OR EXECUTED;

55 (C) A PHYSICAL, MENTAL, OR MEDICAL INJURY OCCURRED AS A RESULT OF CARE
56 PROVIDED PURSUANT TO PARAGRAPH (A) OR (B) OF THIS SUBDIVISION; AND

1 (D) SUCH PERSON REASONABLY BELIEVES THAT THE INJURY WAS NOT THE RESULT
2 OF ABUSE.

3 7.(A) ANY INDIVIDUAL SPECIFIED IN SUBDIVISION ONE OF THIS SECTION WHO
4 HAS KNOWLEDGE OF, OR REASONABLY SUSPECTS THAT, TYPES OF ELDER OR DEPEND-
5 ENT ADULT ABUSE FOR WHICH REPORTS ARE NOT MANDATED HAVE BEEN INFLICTED
6 UPON AN ELDER OR DEPENDENT ADULT OR THAT HIS OR HER EMOTIONAL WELL-BEING
7 IS ENDANGERED IN ANY OTHER WAY, MAY REPORT THE KNOWN OR SUSPECTED
8 INSTANCE OF ABUSE.

9 (B) IF THE SUSPECTED OR ALLEGED ABUSE OCCURRED IN A LONG-TERM CARE
10 FACILITY OTHER THAN A STATE MENTAL HEALTH HOSPITAL OR A STATE DEVELOP-
11 MENTAL CENTER, THE REPORT MAY BE MADE TO THE COMMISSIONER OF THE OFFICE
12 OF CHILDREN AND FAMILY SERVICES.

13 (C) IF THE SUSPECTED OR ALLEGED ABUSE OCCURRED IN A STATE MENTAL
14 HEALTH HOSPITAL OR A STATE DEVELOPMENTAL CENTER, THE REPORT MAY BE MADE
15 TO THE OFFICE OF MENTAL HEALTH OR THE OFFICE OF MENTAL RETARDATION AND
16 DEVELOPMENTAL DISABILITIES.

17 (D) IF THE SUSPECTED OR ALLEGED ABUSE OCCURRED IN A PLACE OTHER THAN A
18 PLACE DESCRIBED IN PARAGRAPH (B) OR (C) OF THIS SUBDIVISION, THE REPORT
19 MAY BE MADE TO THE STATEWIDE CENTRAL REGISTRY.

20 8. IF THE CONDUCT INVOLVES CRIMINAL ACTIVITY NOT COVERED IN SUBDIVI-
21 SION FIVE OR SIX OF THIS SECTION, IT MAY BE IMMEDIATELY REPORTED TO THE
22 APPROPRIATE LAW ENFORCEMENT AGENCY.

23 9. WHEN TWO OR MORE INDIVIDUALS SPECIFIED IN SUBDIVISION ONE OF THIS
24 SECTION ARE PRESENT AND JOINTLY HAVE KNOWLEDGE OR REASONABLY SUSPECT
25 THAT TYPES OF ABUSE OF AN ELDER OR A DEPENDENT ADULT FOR WHICH A REPORT
26 IS OR IS NOT MANDATED HAVE OCCURRED, AND WHEN THERE IS AGREEMENT AMONG
27 THEM, THE TELEPHONE REPORT MAY BE MADE BY A MEMBER OF THE TEAM SELECTED
28 BY MUTUAL AGREEMENT, AND A SINGLE REPORT MAY BE MADE AND SIGNED BY THE
29 SELECTED MEMBER OF THE REPORTING TEAM. ANY MEMBER WHO HAS KNOWLEDGE THAT
30 THE MEMBER DESIGNATED TO REPORT HAS FAILED TO DO SO SHALL THEREAFTER
31 MAKE THE REPORT.

32 10. A TELEPHONE REPORT OF A KNOWN OR SUSPECTED INSTANCE OF ELDER OR
33 DEPENDENT ADULT ABUSE SHALL INCLUDE THE NAME OF THE PERSON MAKING THE
34 REPORT, THE NAME AND AGE OF THE ELDER OR DEPENDENT ADULT, THE PRESENT
35 LOCATION OF THE ELDER OR DEPENDENT ADULT, THE NAMES AND ADDRESSES OF
36 FAMILY MEMBERS OR ANY OTHER PERSON RESPONSIBLE FOR THE ELDER OR DEPEND-
37 ENT ADULT'S CARE, IF KNOWN, THE NATURE AND EXTENT OF THE ELDER OR
38 DEPENDENT ADULT'S CONDITION, THE DATE OF THE INCIDENT, AND ANY OTHER
39 INFORMATION, INCLUDING INFORMATION THAT LED THAT PERSON TO SUSPECT ELDER
40 OR DEPENDENT ADULT ABUSE, REQUESTED BY THE AGENCY RECEIVING THE REPORT.

41 S 313. ACTION ON REPORTS. 1. THE COMMISSIONER OF THE OFFICE OF CHIL-
42 DREN AND FAMILY SERVICES UPON RECEIVING A REPORT THAT AN ELDERLY PERSON
43 ALLEGEDLY IS BEING, OR HAS BEEN, ABUSED, NEGLECTED, EXPLOITED OR ABAN-
44 DONED, OR IS IN NEED OF PROTECTIVE SERVICES SHALL CAUSE A PROMPT AND
45 THOROUGH EVALUATION TO BE MADE, THROUGH THE APPROPRIATE LOCAL OR COUNTY
46 DEPARTMENT OF SOCIAL SERVICES TO DETERMINE THE SITUATION RELATIVE TO THE
47 CONDITION OF THE ELDERLY PERSON AND WHAT ACTION AND SERVICES, IF ANY,
48 ARE REQUIRED. THE EVALUATION SHALL INCLUDE A VISIT TO THE NAMED ELDERLY
49 PERSON AND CONSULTATION WITH THOSE INDIVIDUALS HAVING KNOWLEDGE OF THE
50 FACTS OF THE PARTICULAR CASE.

51 2. UPON PROBABLE CAUSE TO BELIEVE THAT AN INDIVIDUAL COVERED BY THIS
52 TITLE IS BEING ABUSED, MALTREATED OR NEGLECTED, A REPRESENTATIVE OF THE
53 LOCAL OR COUNTY DEPARTMENT OF SOCIAL SERVICES, ACCOMPANIED BY A LAW
54 ENFORCEMENT OFFICER, MAY ENTER A PREMISES, AFTER OBTAINING A COURT ORDER
55 AND ANNOUNCING THEIR AUTHORITY AND PURPOSE.

1 3. UPON COMPLETION OF THE EVALUATION OF EACH CASE, WRITTEN FINDINGS
2 SHALL BE PREPARED WHICH SHALL INCLUDE RECOMMENDED ACTION AND A DETERMI-
3 NATION OF WHETHER PROTECTIVE SERVICES ARE NEEDED.

4 4. EACH LOCAL OR COUNTY DEPARTMENT OF SOCIAL SERVICES SHALL MAINTAIN A
5 REGISTRY OF THE REPORTS RECEIVED, THE EVALUATION AND FINDINGS AND THE
6 ACTIONS RECOMMENDED, AND SHALL FURNISH COPIES OF SUCH DATA TO THE OFFICE
7 OF CHILDREN AND FAMILY SERVICES FOR A STATEWIDE REGISTRY.

8 5. NEITHER THE ORIGINAL REPORT NOR THE EVALUATION REPORT OF THE LOCAL
9 OR COUNTY DEPARTMENT OF SOCIAL SERVICES SHALL BE DEEMED A PUBLIC RECORD.
10 THE NAME OF THE PERSON MAKING THE ORIGINAL REPORT OR ANY PERSON
11 MENTIONED IN SUCH REPORT SHALL NOT BE DISCLOSED UNLESS THE PERSON MAKING
12 THE ORIGINAL REPORT SPECIFICALLY REQUESTS SUCH DISCLOSURE OR UNLESS A
13 JUDICIAL PROCEEDING RESULTS THEREFROM.

14 S 314. JUDICIAL REVIEW. 1. IF IT IS DETERMINED THAT AN ELDERLY PERSON
15 IS IN NEED OF PROTECTIVE SERVICES, THE LOCAL OR COUNTY DEPARTMENT OF
16 SOCIAL SERVICES SHALL FURNISH THE NECESSARY SERVICES, PROVIDED THE
17 ELDERLY PERSON CONSENTS.

18 2. IF AN ELDERLY PERSON DOES NOT CONSENT TO THE RECEIPT OF REASONABLE
19 AND NECESSARY PROTECTIVE SERVICES, OR IF SUCH PERSON WITHDRAWS THE
20 CONSENT, SUCH SERVICES SHALL NOT BE PROVIDED OR CONTINUED, EXCEPT THAT
21 IF THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES HAS
22 REASON TO BELIEVE THAT SUCH ELDERLY PERSON IS AT RISK OF SERIOUS HARM
23 AND LACKS CAPACITY TO CONSENT, HE MAY PROCEED TO PETITION FOR AN ORDER
24 FOR SHORT-TERM INVOLUNTARY PROTECTIVE SERVICES PURSUANT TO SECTION FOUR
25 HUNDRED SEVENTY-THREE-A OF THIS CHAPTER.

26 3. IF THE CARETAKER OF AN ELDERLY PERSON WHO HAS CONSENTED TO THE
27 RECEIPT OF REASONABLE AND NECESSARY PROTECTIVE SERVICES REFUSES TO ALLOW
28 THE PROVISION OF SUCH SERVICES TO SUCH ELDERLY PERSON, THE COMMISSIONER
29 OF THE OFFICE OF CHILDREN AND FAMILY SERVICES MAY PETITION THE SUPREME
30 COURT OR THE SURROGATE'S COURT FOR AN ORDER ENJOINING THE CARETAKER FROM
31 INTERFERING WITH THE PROVISION OF PROTECTIVE SERVICES TO THE ELDERLY
32 PERSON. THE PETITION SHALL ALLEGE SPECIFIC FACTS SUFFICIENT TO SHOW THAT
33 THE ELDERLY PERSON IS IN NEED OF PROTECTIVE SERVICES AND CONSENTS TO
34 THEIR PROVISION AND THAT THE CARETAKER REFUSES TO ALLOW THE PROVISION OF
35 SUCH SERVICES. IF THE JUDGE FINDS THAT THE ELDERLY PERSON IS IN NEED OF
36 SUCH SERVICES AND HAS BEEN PREVENTED BY THE CARETAKER FROM RECEIVING THE
37 SAME, THE JUDGE MAY ISSUE AN ORDER ENJOINING THE CARETAKER FROM INTER-
38 FERING WITH THE PROVISION OF PROTECTIVE SERVICES TO THE ELDERLY PERSON.

39 S 315. AUTHORITY OF OFFICE OF CHILDREN AND FAMILY SERVICES. 1. EVERY
40 PERSON, DEPARTMENT, AGENCY OR COMMISSION AUTHORIZED TO CARRY OUT THE
41 DUTIES ENUMERATED IN THIS TITLE SHALL HAVE ACCESS TO ALL RELEVANT
42 RECORDS, EXCEPT THAT RECORDS WHICH ARE CONFIDENTIAL TO AN ELDERLY PERSON
43 SHALL ONLY BE DISCLOSED WITH THE WRITTEN CONSENT OF THE ELDERLY PERSON
44 OR HIS REPRESENTATIVE. THE AUTHORITY OF THE OFFICE OF CHILDREN AND FAMI-
45 LY SERVICES UNDER THIS TITLE SHALL INCLUDE, BUT NOT BE LIMITED TO, THE
46 RIGHT TO INITIATE OR OTHERWISE TAKE THOSE ACTIONS NECESSARY TO ASSURE
47 THE HEALTH, SAFETY AND WELFARE OF ANY ELDERLY PERSON, SUBJECT TO ANY
48 SPECIFIC REQUIREMENT FOR INDIVIDUAL CONSENT, AND THE RIGHT TO AUTHORIZE
49 THE TRANSFER OF AN ELDERLY PERSON FROM AN ADULT CARE FACILITY INTERMEDI-
50 ATE OR RESIDENTIAL HEALTH CARE FACILITY, NURSING HOME, OR HOSPITAL.

51 2. THE OFFICE OF CHILDREN AND FAMILY SERVICES, WITHIN TEN CALENDAR
52 DAYS OF THE REFERRAL OF ANY CASES FOR THE PROVISION OF PROTECTIVE
53 SERVICES, SHALL FURNISH THE LOCAL OR COUNTY DEPARTMENT OF SOCIAL
54 SERVICES A WRITTEN REPORT OUTLINING THE INTENDED PLAN OF SERVICES. THE
55 LOCAL OR COUNTY DEPARTMENT OF SOCIAL SERVICES SHALL HAVE THE RIGHT TO
56 COMMENT ON THE PROPOSED PLAN.

1 S 316. ASSISTANCE OF OTHER AGENCIES. IN PERFORMING THE DUTIES SET
2 FORTH IN THIS TITLE, THE LOCAL OR COUNTY DEPARTMENT OF SOCIAL SERVICES
3 MAY REQUEST THE ASSISTANCE OF THE STAFFS AND RESOURCES OF ALL APPROPRI-
4 ATE STATE DEPARTMENTS, AGENCIES AND COMMISSIONS AND LOCAL HEALTH DIREC-
5 TORS.

6 S 317. REVIEW. SUBSEQUENT TO THE AUTHORIZATION FOR THE PROVISION OF
7 REASONABLE AND NECESSARY PROTECTIVE SERVICES, THE OFFICE OF CHILDREN AND
8 FAMILY SERVICES SHALL INITIATE A REVIEW OF EACH CASE WITHIN FORTY-FIVE
9 DAYS, TO DETERMINE WHETHER CONTINUATION OF, OR MODIFICATION IN, THE
10 SERVICES PROVIDED IS WARRANTED. A DECISION TO CONTINUE THE PROVISION OF
11 SUCH SERVICES SHOULD BE MADE IN CONCERT WITH APPROPRIATE PERSONNEL FROM
12 OTHER INVOLVED STATE AND LOCAL GROUPS, AGENCIES AND DEPARTMENTS, AND
13 SHALL COMPLY WITH THE CONSENT PROVISIONS OF THIS TITLE. REEVALUATIONS OF
14 EACH SUCH CASE SHALL BE MADE EVERY NINETY DAYS THEREAFTER. THE OFFICE OF
15 CHILDREN AND FAMILY SERVICES SHALL ADVISE THE APPROPRIATE LOCAL OR COUN-
16 TY DEPARTMENT OF SOCIAL SERVICES OF THE DECISIONS RELATIVE TO CONTINUA-
17 TION OF PROTECTIVE SERVICES FOR EACH SUCH ELDERLY PERSON.

18 S 318. COSTS FOR PROVIDING PROTECTIVE SERVICES. PRIOR TO IMPLEMENTA-
19 TION OF ANY PROTECTIVE SERVICES, AN EVALUATION SHALL BE UNDERTAKEN BY
20 THE OFFICE OF CHILDREN AND FAMILY SERVICES PURSUANT TO REGULATIONS WHICH
21 SHALL BE ADOPTED BY THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMI-
22 LY SERVICES REGARDING THE ELDERLY PERSON'S FINANCIAL CAPABILITY FOR
23 PAYING FOR THE PROTECTIVE SERVICES. IF THE PERSON IS SO ABLE, PROCEDURES
24 FOR THE REIMBURSEMENT FOR THE COSTS OF PROVIDING THE NEEDED PROTECTIVE
25 SERVICES SHOULD BE INITIATED. IF IT IS DETERMINED THAT THE PERSON IS NOT
26 FINANCIALLY CAPABLE OF PAYING FOR SUCH NEEDED SERVICES, THE SERVICES
27 SHALL BE PROVIDED IN ACCORDANCE WITH POLICIES AND PROCEDURES ESTABLISHED
28 BY THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES FOR
29 THE PROVISION OF SOCIAL SERVICES BENEFITS UNDER SUCH CIRCUMSTANCES.

30 S 319. ABUSE OF DUTIES OF CARETAKER. IF AS A RESULT OF ANY INVESTI-
31 GATION INITIATED UNDER THE PROVISIONS OF THIS TITLE, A DETERMINATION IS
32 MADE THAT A CARETAKER OR OTHER PERSON HAS ABUSED, NEGLECTED, EXPLOITED
33 OR ABANDONED AN ELDERLY PERSON, SUCH INFORMATION SHALL BE REFERRED IN
34 WRITING TO THE ATTORNEY GENERAL OR HIS DESIGNEE, AND THE DISTRICT ATTOR-
35 NEY IN THE COUNTY IN WHICH THE ABUSE, NEGLECT, EXPLOITATION OR ABANDON-
36 MENT IS BELIEVED TO HAVE OCCURRED WHICH SHALL CONDUCT SUCH FURTHER
37 INVESTIGATION, IF ANY IS DEEMED NECESSARY AND SHALL DETERMINE WHETHER
38 CRIMINAL PROCEEDINGS SHOULD BE INITIATED AGAINST SUCH CARETAKER OR OTHER
39 PERSON, IN ACCORDANCE WITH APPLICABLE STATE LAW.

40 S 320. STATEWIDE CENTRAL REGISTER OF ELDERLY ABUSE. 1. THERE SHALL BE
41 ESTABLISHED IN THE OFFICE OF CHILDREN AND FAMILY SERVICES A STATEWIDE
42 CENTRAL REGISTER OF ELDERLY ABUSE REPORTS MADE PURSUANT TO THIS TITLE.

43 2. THE CENTRAL REGISTER SHALL BE CAPABLE OF RECEIVING ORAL AND ELEC-
44 TRONIC REPORTS OF ELDERLY ABUSE, NEGLECT, EXPLOITATION OR ABANDONMENT
45 AND OF IMMEDIATELY IDENTIFYING PRIOR REPORTS OF ELDERLY ABUSE, NEGLECT,
46 EXPLOITATION OR ABANDONMENT AND CAPABLE OF MONITORING THE PROVISION OF
47 ELDERLY PROTECTIVE SERVICES TWENTY-FOUR HOURS A DAY, SEVEN DAYS A WEEK.
48 TO EFFECTUATE THIS PURPOSE, BUT SUBJECT TO THE PROVISIONS OF THE APPRO-
49 PRIATE LOCAL PLAN FOR THE PROVISION OF ELDERLY PROTECTIVE SERVICES,
50 THERE SHALL BE A SINGLE STATEWIDE TELEPHONE NUMBER THAT ALL PERSONS,
51 WHETHER MANDATED BY THE LAW OR NOT, MAY USE TO REPORT CASES OF SUSPECTED
52 ELDERLY ABUSE, NEGLECT, EXPLOITATION OR ABANDONMENT AND THAT ALL PERSONS
53 SO AUTHORIZED BY THIS TITLE MAY USE FOR DETERMINING THE EXISTENCE OF
54 PRIOR REPORTS IN ORDER TO EVALUATE THE CONDITION OR CIRCUMSTANCES OF THE
55 ELDERLY PERSON BEFORE THEM. SUCH ORAL REPORTS SHALL BE IMMEDIATELY
56 TRANSMITTED ORALLY OR ELECTRONICALLY BY THE OFFICE OF CHILDREN AND FAMI-

1 LY SERVICES TO THE APPROPRIATE LOCAL ELDERLY PERSON PROTECTIVE SERVICE.
2 IF THE RECORDS INDICATE A PREVIOUS REPORT CONCERNING A SUBJECT OF THE
3 REPORT, OTHER PERSONS NAMED IN THE REPORT OR OTHER PERTINENT INFORMA-
4 TION, THE APPROPRIATE LOCAL ELDERLY PROTECTIVE SERVICE SHALL BE IMME-
5 DIATELY NOTIFIED OF THE FACT.

6 3. THE CENTRAL REGISTER SHALL INCLUDE BUT NOT BE LIMITED TO THE
7 FOLLOWING INFORMATION: ALL THE INFORMATION IN THE WRITTEN REPORT; A
8 RECORD OF THE FINAL DISPOSITION OF THE REPORT, INCLUDING SERVICES
9 OFFERED AND SERVICES ACCEPTED; THE PLAN FOR REHABILITATIVE TREATMENT;
10 THE NAMES AND IDENTIFYING DATA, DATES AND CIRCUMSTANCES OF ANY PERSON
11 REQUESTING OR RECEIVING INFORMATION FROM THE REGISTER; AND ANY OTHER
12 INFORMATION WHICH THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY
13 SERVICES BELIEVES MIGHT BE HELPFUL IN THE FURTHERANCE OF THE PURPOSES OF
14 THIS CHAPTER.

15 4. REPORTS MADE PURSUANT TO THIS TITLE AS WELL AS ANY OTHER INFORMA-
16 TION OBTAINED, REPORTS WRITTEN OR PHOTOGRAPHS TAKEN CONCERNING SUCH
17 REPORTS IN THE POSSESSION OF THE OFFICE OF CHILDREN AND FAMILY SERVICES
18 OR LOCAL DEPARTMENTS SHALL BE CONFIDENTIAL AND SHALL ONLY BE MADE AVAIL-
19 ABLE TO (A) A PHYSICIAN WHO HAS BEFORE HIM AN ELDERLY PERSON WHOM HE
20 REASONABLY SUSPECTS MAY BE ABUSED, NEGLECTED, EXPLOITED OR ABANDONED;
21 (B) A PERSON AUTHORIZED TO PLACE AN ELDERLY PERSON IN PROTECTIVE CUSTODY
22 WHEN SUCH PERSON HAS BEFORE HIM AN ELDERLY PERSON WHOM HE REASONABLY
23 SUSPECTS MAY BE ABUSED, NEGLECTED, EXPLOITED OR ABANDONED AND SUCH
24 PERSON REQUIRES THE INFORMATION IN THE RECORD TO DETERMINE WHETHER TO
25 PLACE THE ELDERLY PERSON IN PROTECTIVE CUSTODY; (C) A DULY AUTHORIZED
26 AGENCY HAVING THE RESPONSIBILITY FOR THE CARE OR SUPERVISION OF AN
27 ELDERLY PERSON WHO IS REPORTED TO THE CENTRAL REGISTER OF ELDERLY ABUSE;
28 (D) ANY PERSON WHO IS THE SUBJECT OF THE REPORT OR OTHER PERSONS NAMED
29 IN THE REPORT; (E) A COURT, UPON A FINDING THAT THE INFORMATION IN THE
30 RECORD IS NECESSARY FOR THE DETERMINATION OF AN ISSUE BEFORE THE COURT;
31 (F) A GRAND JURY, UPON A FINDING THAT THE INFORMATION IN THE RECORD IS
32 NECESSARY FOR THE DETERMINATION OF CHARGES BEFORE THE GRAND JURY; (G)
33 ANY APPROPRIATE STATE LEGISLATIVE COMMITTEE RESPONSIBLE FOR ELDERLY
34 PROTECTIVE LEGISLATION AND ANY TEMPORARY STATE COMMISSION HAVING THE
35 POWERS OF A LEGISLATIVE COMMITTEE AND HAVING THE POWER TO REVIEW SUCH
36 LEGISLATION AND MAKE RECOMMENDATIONS THEREON TO THE GOVERNOR AND LEGIS-
37 LATURE; (H) ANY PERSON ENGAGED IN A BONA FIDE RESEARCH PURPOSE,
38 PROVIDED, HOWEVER, THAT NO INFORMATION IDENTIFYING THE SUBJECTS OF THE
39 REPORT OR OTHER PERSONS NAMED IN THE REPORT SHALL BE MADE AVAILABLE TO
40 THE RESEARCHER UNLESS IT IS ABSOLUTELY ESSENTIAL TO THE RESEARCH PURPOSE
41 AND THE OFFICE OF CHILDREN AND FAMILY SERVICES GIVES PRIOR APPROVAL; (I)
42 AUTHORIZED AGENCIES AND THE OFFICE FOR THE AGING; (J) THE STATE COMMIS-
43 SION ON QUALITY OF CARE FOR THE MENTALLY DISABLED IN CONNECTION WITH AN
44 INVESTIGATION BEING CONDUCTED BY THE COMMISSION PURSUANT TO ARTICLE
45 FORTY-FIVE OF THE MENTAL HYGIENE LAW. HOWEVER, NO INFORMATION MAY BE
46 RELEASED UNLESS THE PERSON OR OFFICIAL'S IDENTITY IS CONFIRMED BY THE
47 DEPARTMENT AND THE RELEASED INFORMATION STATES WHETHER THE REPORT IS
48 "INDICATED" OR "UNDER INVESTIGATION," WHICHEVER THE CASE MAY BE. A
49 PERSON GIVEN ACCESS TO THE NAMES OR OTHER INFORMATION IDENTIFYING THE
50 SUBJECTS OF THE REPORT OR OTHER PERSONS NAMED IN THE REPORT, EXCEPT THE
51 SUBJECT OF THE REPORT OR OTHER PERSONS NAMED IN THE REPORT, SHALL NOT
52 DIVULGE OR MAKE PUBLIC SUCH IDENTIFYING INFORMATION UNLESS HE IS A
53 DISTRICT ATTORNEY OR OTHER LAW ENFORCEMENT OFFICIAL AND THE PURPOSE IS
54 TO INITIATE COURT ACTION.

55 5. UNLESS AN INVESTIGATION OF A REPORT CONDUCTED PURSUANT TO THIS
56 TITLE DETERMINES THAT THERE IS SOME CREDIBLE EVIDENCE OF THE ALLEGED

1 ABUSE, NEGLECT, EXPLOITATION OR ABANDONMENT, ALL INFORMATION IDENTIFYING
2 THE SUBJECTS OF THE REPORT AND OTHER PERSONS NAMED IN THE REPORT SHALL
3 BE EXPUNGED FROM THE CENTRAL REGISTER AND FROM THE RECORDS OF ALL LOCAL
4 ELDERLY PROTECTIVE SERVICES FORTHWITH.

5 6. IN ALL OTHER CASES, THE RECORD OF THE REPORT TO THE CENTRAL REGIS-
6 TER SHALL BE EXPUNGED NO LATER THAN TEN YEARS AFTER THE DEATH OF THE
7 ELDERLY PERSON. IN ANY CASE AND AT ANY TIME, THE COMMISSIONER OF THE
8 OFFICE OF CHILDREN AND FAMILY SERVICES MAY AMEND OR EXPUNGE ANY RECORD
9 UPON GOOD CAUSE SHOWN AND NOTICE TO THE SUBJECTS OF THE REPORT AND OTHER
10 PERSONS NAMED IN THE REPORT.

11 7. AT ANY TIME, A SUBJECT OF A REPORT AND OTHER PERSONS NAMED IN THE
12 REPORT MAY RECEIVE, UPON REQUEST, A COPY OF ALL INFORMATION CONTAINED IN
13 THE CENTRAL REGISTER; PROVIDED, HOWEVER, THAT THE COMMISSIONER OF THE
14 OFFICE OF CHILDREN AND FAMILY SERVICES IS AUTHORIZED TO PROHIBIT THE
15 RELEASE OF DATA THAT WOULD IDENTIFY THE PERSON WHO MADE THE REPORT OR
16 WHO COOPERATED IN A SUBSEQUENT INVESTIGATION, WHICH HE REASONABLY FINDS
17 WILL BE DETRIMENTAL TO THE SAFETY OR INTERESTS OF SUCH PERSON.

18 8. AT ANY TIME SUBSEQUENT TO THE COMPLETION OF THE INVESTIGATION BUT
19 IN NO EVENT LATER THAN NINETY DAYS AFTER THE SUBJECT OF THE REPORT IS
20 NOTIFIED THAT THE REPORT IS INDICATED THE SUBJECT MAY REQUEST THE
21 COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES TO AMEND OR
22 EXPUNGE THE RECORD OF THE REPORT. IF THE COMMISSIONER OF THE OFFICE OF
23 CHILDREN AND FAMILY SERVICES DOES NOT AMEND OR EXPUNGE THE REPORT WITHIN
24 NINETY DAYS OF RECEIVING SUCH REQUEST, THE SUBJECT SHALL HAVE THE RIGHT
25 TO A FAIR HEARING TO DETERMINE WHETHER THE RECORD OF THE REPORT IN THE
26 CENTRAL REGISTER SHOULD BE AMENDED OR EXPUNGED ON THE GROUNDS THAT IT IS
27 INACCURATE OR IT IS BEING MAINTAINED IN A MANNER INCONSISTENT WITH THIS
28 TITLE. THE APPROPRIATE LOCAL ELDERLY PROTECTIVE SERVICE SHALL BE GIVEN
29 NOTICE OF THE FAIR HEARING. THE BURDEN OF PROOF IN SUCH HEARING SHALL BE
30 ON THE OFFICE OF CHILDREN AND FAMILY SERVICES AND APPROPRIATE LOCAL
31 ELDERLY PROTECTIVE SERVICE. IN SUCH HEARINGS, THE FACT THAT THERE WAS A
32 COURT FINDING OF ABUSE, NEGLECT, EXPLOITATION OR ABANDONMENT SHALL BE
33 PRESUMPTIVE EVIDENCE THAT THE REPORT WAS SUBSTANTIATED. THE COMMISSIONER
34 OF THE OFFICE OF CHILDREN AND FAMILY SERVICES OR HIS DESIGNATED AGENT IS
35 HEREBY AUTHORIZED AND EMPOWERED TO MAKE ANY APPROPRIATE ORDER RESPECTING
36 THE AMENDMENT OR EXPUNGEMENT OF THE RECORD TO MAKE IT ACCURATE OR
37 CONSISTENT WITH THE REQUIREMENTS OF THIS TITLE.

38 9. WRITTEN NOTICE OF ANY EXPUNGEMENT OR AMENDMENT OF ANY RECORD, MADE
39 PURSUANT TO THE PROVISIONS OF THIS TITLE, SHALL BE SERVED UPON EACH
40 SUBJECT OF SUCH RECORD, OTHER PERSONS NAMED IN THE REPORT AND THE APPRO-
41 PRIATE LOCAL ELDERLY PROTECTIVE SERVICE. THE LATTER, UPON RECEIPT OF
42 SUCH NOTICE, SHALL TAKE THE APPROPRIATE SIMILAR ACTION IN REGARD TO THE
43 LOCAL ELDERLY ABUSE REGISTER AND INFORM, FOR THE SAME PURPOSE, ANY OTHER
44 AGENCY WHICH RECEIVED SUCH RECORD PURSUANT TO THIS TITLE.

45 10. ANY PERSON WHO WILLFULLY PERMITS AND ANY PERSON WHO ENCOURAGES THE
46 RELEASE OF ANY DATA AND INFORMATION CONTAINED IN THE CENTRAL REGISTER TO
47 PERSONS OR AGENCIES NOT PERMITTED BY THIS TITLE SHALL BE GUILTY OF A
48 CLASS A MISDEMEANOR.

49 S 2. The sum of six hundred thousand dollars (\$600,000), or so much
50 thereof as may be necessary, is hereby appropriated to the office of
51 children and family services out of any moneys in the state treasury in
52 the general fund to the credit of the state purposes account not other-
53 wise appropriated, for its expenses, including personal service, mainte-
54 nance and operation in carrying out the provisions of this act. Such
55 moneys shall be payable on the audit and warrant of the comptroller on
56 vouchers certified or approved by the commissioner of the office of

1 children and family services or his designee, in the manner prescribed
2 by law.

3 S 3. This act shall take effect on the one hundred twentieth day after
4 it shall have become a law, except that any rules and regulations neces-
5 sary for the timely implementation of this act on its effective date
6 shall be promulgated on or before such date.