

KEVIN BLAUM, DEMOCRATIC CHAIRMAN
JUDICIARY COMMITTEE
RULES COMMITTEE



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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

January 4, 2002

The Honorable Mark S. Schweiker
Governor of the Commonwealth of Pennsylvania
225 Main Capitol
Harrisburg, PA 17120

Dear Governor Schweiker:

I am calling upon you to exercise your authority under state law to immediately request a legal opinion from Attorney General Mike Fisher in regard to the case of Nixon et al. v. the Commonwealth of Pennsylvania, 359 M. D. 2000, Commonwealth Court Docket, reported December 11, 2001.

As you know, this case challenged the ban on hiring and employing individuals to work in nursing homes, personal care homes, domiciliary care homes, older adult daily living centers and home health care agencies if they have been convicted of serious crimes enumerated in the Older Adults Protective Services Act (OAPSA). Those crimes include criminal homicide, rape, aggravated assault, sexual assault, indecent assault, unlawful restraint, statutory sexual assault, involuntary deviate sexual intercourse, incest, indecent exposure, sexual abuse of children, aggravated indecent assault, felony theft or two or more misdemeanor theft offenses, forgery, securing execution of documents by deception, intimidation of witnesses or victims, retaliation against a witness or victim, a felony offense of prostitution, dealing with obscene and other sexual materials and performances, the corruption of minors, arson, burglary, robbery, kidnapping, concealing the death of a child, dealing in infant children, endangering the welfare of children, a felony drug offense, and a federal or out-of-state crime similar to any of these crimes.

Commonwealth Court ruled that the criminal records provisions of the act were unconstitutional only in respect to the petitioners who filed the lawsuit. It did not rule the hiring ban was unconstitutional in respect to all current and prospective employees in programs that provide care to older, disabled individuals.

Apparently, the Department of Aging has taken the position that the court's ruling voided Section 503 of the OAPSA in its entirety, thus lifting the ban on hiring certain criminal offenders. On its website the department has issued a notice indicating that as a

result of the court decision facilities will now have "discretion to make their decision as to whether to hire applicants." In addition, on December 27, 2001, the department submitted final-form adult protective services regulations to IRRC (the Independent Regulatory Review Commission) and the House and Senate standing committees that obliterate the ban on hiring and retaining employees convicted of various criminal offenses. In its place, the department would simply require that the criminal history reports be maintained as part of an individual's employment records. The prohibition on hiring or retaining employees with certain criminal records is completely eliminated. Moreover, the department has indicated to providers that because of the Commonwealth Court ruling it cannot determine an applicant's eligibility for employment in respect to FBI checks and the determination to employ the applicant is at the discretion of the facility.

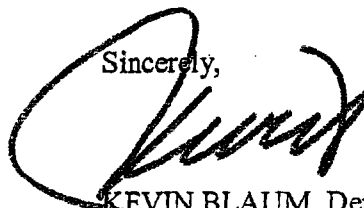
It is unthinkable that hundreds of thousands of our most vulnerable citizens, many of them severely physically and mentally incapacitated, will be left without the protections mandated by the law. As stated in the OAPSA,

"It is declared the policy of the Commonwealth of Pennsylvania that older adults who lack the capacity to protect themselves and are at imminent risk of abuse, neglect, exploitation or abandonment shall have access to and be provided with services necessary to protect their health, safety and welfare." (Act 79 of 1987)

In lieu of the Attorney General's decision on whether or not to appeal the decision to the Supreme Court and without further clarification from the Attorney General as to the Commonwealth Court's decision, I fear that our state will be inviting disaster and putting thousands of fragile, immobile, disabled and severely low-functioning adults in harm's way and jeopardizing their health and safety. The Department of Aging, which was created to protect and advocate for the needs of older persons, has rushed to judgment on this court decision and I believe misread the decision. I would like the Attorney General to review the case and issue his opinion on the case, the law, the responsibilities of providers, and the safeguards granted to recipients of services.

The safety of thousands of our most vulnerable residents rests in your hands. Please act swiftly to request the Attorney General's legal opinion on this case. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Blaum", written over the word "Sincerely,".

KEVIN BLAUM, Democratic Chairman
Judiciary Committee

Enclosures

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

EARL NIXON, REGINALD CURRY, :
KELLY WILLIAMS, MARIE MARTIN, :
THEODORE SHARP, and RESOURCES :
FOR HUMAN DEVELOPMENT, INC., :
Petitioners, :

No. M.D. Appeal Dkt. 2002

v.

THE COMMONWEALTH OF :
PENNSYLVANIA, DEPARTMENT OF :
PUBLIC WELFARE OF THE :
COMMONWEALTH OF :
PENNSYLVANIA, DEPARTMENT OF :
AGING OF THE COMMONWEALTH :
OF PENNSYLVANIA, and :
DEPARTMENT OF HEALTH OF THE :
COMMONWEALTH OF :
PENNSYLVANIA, :
Respondents :

JURISDICTIONAL STATEMENT

Appellants, Commonwealth of Pennsylvania, the Pennsylvania Department of Public Welfare, the Pennsylvania Department of Aging and the Pennsylvania Department of Health have appealed from the order entered by Commonwealth Court in this case on December 11, 2001. In that order, Commonwealth Court denied Appellants' preliminary objections to the Petition for Review and granted the Appellees' motion for summary relief. In support of this appeal, the Appellants submit the following Jurisdictional Statement, pursuant to Pa. R.A.P. 909 and 910.

Reports of the Opinion Below

The December 11, 2001 opinion of the Commonwealth Court has not yet been reported. A copy of the opinion and order is appended to this statement.

Jurisdictional Basis

This is an appeal from Commonwealth Court's order entering declaratory and injunctive relief against Commonwealth agencies in a matter which was originally commenced in that court. This Court has jurisdiction over the appeal pursuant to 42 Pa.C.S. §723(a) and Pa.R.A.P. 311(a)(4). This Court also has jurisdiction pursuant to Pa. R.A.P. 341(b)(1) as it effectively disposes of all claims and of all parties. The Commonwealth Court's order was entered on December 11, 2001, and the Notice of Appeal was filed on January 9, 2002.

Text of the Order in Question

The Commonwealth Court's December 11, 2001 Order is as follows:

AND NOW, this 11th day of December, 2001, Respondents' preliminary objections are overruled, and Petitioners' motion for summary relief is granted.

DORIS A. SMITH, Judge

Procedural History

The appellees, five individuals who have either lost positions in facilities caring for older citizens or have been precluded from applying for such positions, brought this action in Commonwealth Court's original jurisdiction to enjoin and invalidate a portion of the Older Adults Protective Services Act, Act of November 6, 1987, P.L. 381, 35 P.S. §10225.101, et seq., as amended by The Act of June 9, 1997, P.L. 160. The petition for review named the Commonwealth of Pennsylvania and its agencies which are responsible for enforcing the challenged provisions as respondents. The appellees sought preliminary injunctive relief, but that relief was denied by Commonwealth Court. The Appellant filed preliminary objections to the Petition for Review and petitioners filed a motion for summary relief pursuant to Pa.R.A.P. 1532(b). By order dated

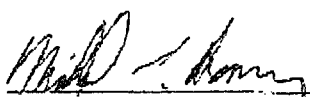
December 11, 2001, the motion for the appellants' preliminary objections were overruled and appellees' summary relief was granted. In granting appellees request for summary relief, Commonwealth Court declared the challenged portion of the Older Adults Protective Services Act to be unconstitutional as applied to the individual petitioners.

Questions Presented for Review

1. Did the Commonwealth Court err in deciding that Section 503 of the Older Adults Protective Services Act, 35 P.S. 10225.503 violated Article 1, §1 of the Pennsylvania Constitution?
2. Did Commonwealth Court err in granting the motion for summary relief?
3. Did Commonwealth Court err in denying Appellants' preliminary objections to the Petition for Review?

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

BY: 
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Senior Deputy Attorney General

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DATE: January 9, 2002

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 FROM: Kristin Marsh

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COMMENTS: _____

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

EARL NIXON, REGINALD CURRY, :
KELLY WILLIAMS, MARIE :
MARTIN, THEODORE SHARP, AND :
RESOURCES FOR HUMAN :
DEVELOPMENT, INC., :
Petitioners :

v. :

NO. 359 M.D. 2000
ARGUED: November 1, 2000

THE COMMONWEALTH OF :
PENNSYLVANIA, DEPARTMENT :
OF PUBLIC WELFARE OF THE :
COMMONWEALTH OF :
PENNSYLVANIA, DEPARTMENT :
OF AGING OF THE :
COMMONWEALTH OF :
PENNSYLVANIA, AND :
DEPARTMENT OF HEALTH OF THE :
COMMONWEALTH OF :
PENNSYLVANIA, :
Respondents :

BEFORE: HONORABLE JOSEPH T. DOYLE, President Judge
HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE DORIS A. SMITH, Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JAMES R. KELLEY, Judge
HONORABLE JIM FLAHERTY, Judge

OPINION BY JUDGE SMITH¹

FILED: December 11, 2001

Petitioners Earl Nixon, Reginald Curry, Kelly Williams, Marie Martin, Theodore Sharp and Resources for Human Development, Inc. (RHD), a non-profit social service organization, filed in this Court's original jurisdiction their

¹This case was assigned to the opinion writer on September 11, 2001.

criminal history background checks of all applicants for employment with covered facilities, and it prohibited a facility from hiring an applicant or retaining an employee required to submit information pursuant to Section 502(a), 35 P.S. §10225.502(a), if the applicant or employee was convicted of certain specified criminal offenses. Section 503(a) of the Act, 35 P.S. §10225.503(a).

The Legislature again amended the Act by the Act of June 9, 1997, P.L. 160 (Act 13). Among other changes, Act 13 rewrote the enumerated disqualifying felonies and misdemeanors in Section 503 and removed the ten-year limitation period for convictions involving lesser crimes formerly found in that section.³ Any potential employee and those employed in covered facilities for less

³Section 503 of the Act now provides in part:

(a) **General rule.**—In no case shall a facility hire an applicant or retain an employee ... if the applicant's or employee's criminal history record information indicates the applicant or employee has been convicted of any of the following offenses:

- (1) An offense designated as a felony under ... The Controlled Substance, Drug, Device and Cosmetic Act.
- (2) An offense under one or more of the following provisions of 18 Pa.C.S. (relating to crimes and offenses):

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 3127 (relating to indecent exposure).

Section 3301 (relating to arson and related offenses).

Section 3502 (relating to burglary).

Section 3701 (relating to robbery).

(Footnote continued on next page...)

constitutionality of acts of the General Assembly. They also contend that federal decisions permit legislatures to enact the type of legislation at issue here and that if the Court were to grant relief, other state statutes restricting employment opportunities might also be invalidated. Citing *Heller v. Doe*, 509 U.S. 312 (1993), *inter alia*, Respondents state that they have no obligation to produce evidence to sustain the rationality of a statutory classification and that the one here has a reasonable basis. Moreover, the Act does not violate Petitioners' due process rights.

In ruling upon preliminary objections in the nature of a demurrer, the Court must accept as true all well-pled facts of the complaint and all reasonable inferences therefrom, and it must determine whether the facts pled are legally sufficient to permit the action to continue. *Altoona Housing Authority v. City of Altoona*, ___ A.2d ___ (Pa. Cmwlth., No. 1619 C.D. 2000, filed July 17, 2001). To sustain preliminary objections, it must appear with certainty to the Court that the law will permit no recovery, and all doubt must be resolved in favor of refusing to sustain the objections. *Id.*; *Bavavordeh v. Borough Council of Prospect Park*, 706 A.2d 362 (Pa. Cmwlth. 1998). In reaching its decision, the Court has reviewed and accepted as true, *inter alia*, the following well-pled facts.

Thirty years ago, in 1971, Mr. Nixon was convicted at the age of nineteen of possession of marijuana for his personal use and was sentenced to three years of probation, which he completed satisfactorily. After employment training by the Pennsylvania Office of Vocational Rehabilitation, Mr. Nixon changed his career as a small business owner and became employed in 1990 as a direct-care specialist with the Allegheny Valley School, a facility that provided care to mentally ill patients. Respondents admit that Mr. Nixon was an excellent worker,

worked in the healthcare field for approximately twelve years, having earned an associate's degree in phlebotomy and later becoming a certified phlebotomist and a member of the American Society of Clinical Phlebotomists. She became employed in 1988 at Montgomery Hospital in Norristown as a phlebotomist, providing services to various nursing homes. Because she had not been employed at the hospital for twelve months preceding the effective date of Act 13, the hospital discharged her due to the 1974 conviction. She is now forever barred from working in a facility covered by the Act.

RHD provides services for individuals suffering from mental illness, mental retardation or chemical dependency. It recruits many of its employees from the inner city, and between July 1, 1997 and July 30, 1998 RHD hired 362 individuals to work in its facilities, located principally in Pennsylvania. Because of Act 13, RHD was required to discharge twenty-five employees, twenty-three of whom are African-Americans and included Petitioners Curry and Martin. RHD averred that the Act has interfered with its ability to hire and retain the best qualified employees and has adversely impacted upon its ability to provide services to its clients. RHD was forced to terminate a successful support program that it administered for veterans at the Coatesville Veterans Administration Hospital due to the Act's adverse impact on its workforce.

III

Article I, Section 1 of the Pennsylvania Constitution provides: "All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness." As was noted in *Hunter v. Port Authority of*

Petitioners argue that the holding in *Secretary of Revenue v. John's Vending Corp.*, 453 Pa. 488, 309 A.2d 358 (1973), controls the outcome of this case. In *John's Vending* the Supreme Court reversed this Court's decision to uphold the revocation of a wholesale cigarette dealer's license based upon the prior conviction record of a fifty-percent shareholder and former president of the company, Raymond Martorano. In reversing this Court and reinstating the license, the Supreme Court noted that every citizen has a right to engage in lawful employment, and a state may not deprive such citizen of this right unless the deprivation is reasonably related to the state interest sought to be protected. It further stated that remote convictions were irrelevant to predicting future behavior and that courts must interpret statutes according to reason and to their spirit.

The Supreme Court reasoned in relevant part in *John's Vending*:

Where, as here, nearly twenty years has expired since the convictions and the record reveals that the individual has held this position of responsibility for twelve years without any allegation of impropriety, it is ludicrous to contend that these prior acts provide any basis to evaluate his present character.

... To interpret Section 403(2) as a blanket prohibition barring anyone who has been convicted of a crime of moral turpitude without regard to the remoteness of those convictions or the individual's subsequent performance would be unreasonable. We cannot assume that the legislature intended such an absurd and harsh result. *See, Appeal of Gagliardi*, 401 Pa. 141, 163 A.2d 418 (1960).

We are also mindful that such a result runs afoul of the deeply ingrained public policy of this State to avoid unwarranted stigmatization of and unreasonable restrictions upon former offenders. This State in recent years has been unalterably committed to rehabilitation of those persons who have been convicted of criminal offenses. *To forever foreclose a permissible means of gainful employment because of an improvident act in the*

A recent decision by the Court, sitting en banc, in *Mixon v. Commonwealth*, 759 A.2d 442 (Pa. Cmwlth. 2000), *aff'd per curiam*, ___ Pa. ___, ___ A.2d ___ (No. 14 MAP 2001, filed October 30, 2001), underscores the holding in *John's Vending*. In *Mixon* this Court invalidated a provision of the Voter Registration Act, Act of June 30, 1995, P.L. 170, 25 P.S. §§961.101 - 961.5109, which prohibited ex-felons from registering to vote within five years after their release from incarceration. The Court observed that nothing supported the logic advanced by the Commonwealth, which argued for the continued punishment of released felons by stripping them of the right to register to vote for an additional five years after their incarceration. The Court rejected the illogical assumption advanced by the Commonwealth that there could be no possibility of rehabilitation during the ex-felons' incarceration and for another five years thereafter. While the right to vote is one of the most basic, *Reynolds v. Sims*, 377 U.S. 533 (1964), the right to lawful employment is absolute.⁵ *John's Vending*.

Petitioners' well-pled facts vividly illustrate the constitutional infirmities present in Act 13 and the draconian impact of its enforcement. They further demonstrate the arbitrary and irrational nature of the challenged provisions and establish that no rational relationship exists between the classification imposed upon Petitioners and a legitimate governmental purpose. Respondents have

⁵While not binding on this Court, the holding in *Davis v. Bucher*, 451 F. Supp. 791 (E.D. Pa. 1978), also lends support for the Court's decision in this case. The federal district court granted summary judgment to the plaintiff in a lawsuit challenging the constitutionality of a blanket hiring policy of the City of Philadelphia that prohibited the employment of former drug users. The court determined that no rational relationship existed between the classification and a legitimate governmental purpose for which it was used. *Also see Furst v. New York City Transit Authority*, 631 F. Supp. 1331 (E.D.N.Y. 1986) (granting summary judgment to plaintiff in suit challenging constitutionality of employer's policy of dismissing all employees convicted of felonies).

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

EARL NIXON, REGINALD CURRY, :
KELLY WILLIAMS, MARIE :
MARTIN, THEODORE SHARP, AND :
RESOURCES FOR HUMAN :
DEVELOPMENT, INC., :

Petitioners :

v. :

NO. 359 M.D. 2000

THE COMMONWEALTH OF :
PENNSYLVANIA, DEPARTMENT :
OF PUBLIC WELFARE OF THE :
COMMONWEALTH OF :
PENNSYLVANIA, DEPARTMENT :
OF AGING OF THE :
COMMONWEALTH OF :
PENNSYLVANIA, AND :
DEPARTMENT OF HEALTH OF THE :
COMMONWEALTH OF :
PENNSYLVANIA, :

Respondents :

ORDER

AND NOW this 11th day of December, 2001, Respondents' preliminary objections are overruled, and Petitioners' motion for summary relief is granted.

DORIS A. SMITH, Judge

I respectfully dissent because I do not agree with the Majority that the criminal records provision of Sections 501-508 of the Older Adults Protective Services Act (Act) violates Article I, Section I of the Pennsylvania Constitution.⁷

While Article I, Section I guarantees an individual's right to engage in any of the common occupations of life, Hunter v. Port Authority of Allegheny County, 419 A.2d 631 (Pa. Super. 1980), the right to engage in a profession is "subject to the lawful exercise of the state's police power to protect the health, safety, welfare and morals by promulgating statutes which reasonably regulate occupations." Pennsylvania Medical Society v. Foster, 608 A.2d 633, 637 (Pa. Cmwlth. 1982) (citing Alder v. Montefiore Hospital Association of Western Pennsylvania, 453 Pa. 60, 311 A.2d 634 (1973)).

The state interest sought to be protected in this case is that of older adults who are incapable of safeguarding themselves. Section 102 of the Act, 35 P.S. § 10225.102 states the legislative policy:

It is declared the policy of the Commonwealth of Pennsylvania that older adults who lack the capacity to protect themselves and are at imminent risk of abuse, neglect, exploitation or abandonment shall have access to and be provided with services necessary to protect their health, safety and welfare. ... It is the intent of the General Assembly to provide for the detection, reduction, correction or elimination of abuse, neglect, exploitation and abandonment, and to establish a program of protective services for older adults in need of them.

(Emphasis added.)

⁷ Act of November 6, 1987, P.L. 381, as amended, added by Section 5 of the Act of December 18, 1996, P.L. 1125 (Act 169), 35 P.S. §§ 10225.501-10225.508.

the convictions cannot provide a basis for the revocation of a wholesaler's license.

John's Vending, 453 Pa. at 495, 309 A.2d at 362.

Here, Petitioners argue that like John's Vending, none of their convictions are materially relevant to their present ability to perform the duties required by their positions. In each case, the remoteness of Petitioners' convictions, coupled with their employment records demonstrate the lack of "material relevance between the past derelictions of [these individuals] and [their] present ability to perform duties required by the[ir] position[s]. Id. at 493, 309 A.2d at 361. We agree with Respondents, however, that the state interest sought to be protected in this case is greater than that in John's Vending. In John's Vending, "the legislature sought to ensure that unstamped cigarettes would not be illegally sold, thereby undermining the revenue to be produced by this tax." Id. Here, the interest sought to be protected is that of older adults, some of our most vulnerable citizens. This class of elderly adults has seen significant growth in numbers due to the advancements made by medical science to such an extent that in their advanced age their physical condition and mental processes no longer protect them sufficiently from abuse, neglect, exploitation or abandonment. The legislature has recognized this need and is attempting to protect this class to the full extent possible. The protection of these individuals, many of whom cannot care for themselves and therefore rely on the assistance of others, is a far greater interest to protect than that of raising revenue through the collection of taxes. Section 102 of the Act, 35 P.S. §10225.102 declares it to be "the policy of the Commonwealth of Pennsylvania that older adults who lack the capacity to protect themselves and are at imminent risk of abuse, neglect, exploitation or abandonment shall have access to and be provided with services necessary to protect their health, safety and

reasonable basis, it does not offend the Constitution simply because the classification is not made with mathematic nicety or because in practice it results in some inequity. Gondelman v. Commonwealth, 520 Pa. 451, 462, 554 A.2d 896, 901 (1989). Although each of the Petitioners has apparently been a rehabilitation success and may be very worthy individuals at the present time, the legislature did not choose to take any risks by making an exception for them and we are not permitted to legislate judicial exceptions. The Act's restriction of prohibiting the employment of individuals who have in the past displayed the inability to make sound judgments, may be inequitable as applied to Petitioners, but it is a reasonable means of achieving the state purpose of protecting the aged and disabled.⁹

Accordingly, I would sustain petitioner's preliminary objections and deny Petitioner's Motion for summary relief.

JIM FLAHERTY, Judge

Judge McGinley joins this dissent.

⁹ Nor do I find that the criminal records provisions of the Act violate the due process right of Petitioners by creating an irrebuttable presumption of unfitness for employment in any capacity covered by a health care facility. To be entitled to a due process hearing, one must have suffered by state action the loss of property or liberty interest. Levine v. Department of Education, 468 A.2d 1216 (Pa. Cmwlth. 1984). Petitioners claim that in accordance with Lyness v. State Board of Medicine, 529 Pa. 535, 541, 605 A.2d 1204, 1207 (1992), a citizen's property right to pursue a lawful occupation is a substantial property right subject to the full protective mechanisms of procedural due process. Although the Supreme Court in Lyness determined that a physician is entitled to due process, that case involved "a license to pursue a livelihood or engage in a profession, which has been held to be a property right protected by Article I, Section I of the Pennsylvania Constitution" Pennsylvania Game Commission v. Marich, 542 Pa. 226, 231, 666 A.2d 253, 256 (1995). The facts in this case reveal, however, that a license or the revocation thereof is not involved.

HB 132 By Representatives VANCE, E. Z. TAYLOR, GRUPPO, BLAUM, SAYLOR, TIGUE, BUXTON, NAILOR, KREBS, MASLAND, GEORGE, FLICK, ARMSTRONG, M. COHEN, NICKOL, COY, B. SMITH, MILLER, JAMES, BELARDI, TULLI, MAITLAND, WAUGH, CORNELL, FEESE, OLASZ, READSHAW, PESCI, DENT, BATTISTO, BOSCOLA, PETRARCA, DeLUCA, TRAVAGLIO, GLADECK, TRELLO, VAN HORNE, ROONEY, BEBKO-JONES, D. W. SNYDER, SHANER, MARSICO, ITKIN, MUNDY, MANDERINO, MICHLOVIC, CURRY, BUNT, COLAFELLA, L. I. COHEN, LUCYK, STEELMAN, RAYMOND, C. WILLIAMS, TRICH, STEVENSON, EGOLF, ROBERTS, BAKER, HABAY, ORIE, BENNINGHOFF, EACHUS and FORCIER.

Prior Printer's Nos. 141, 268, 519, 947.

Printer's No. 1589.

An Act amending the act of November 6, 1987 (P.L.381, No.79), known as the Older Adults Protective Services Act, adding certain definitions; further providing for reporting, for investigations and for reporting suspected abuse by employees.

Referred to AGING AND YOUTH, Jan. 29, 1997
 Reported as amended, Feb. 4, 1997
 First consideration, Feb. 4, 1997
 Laid on the table, Feb. 4, 1997
 Removed from table, Feb. 4, 1997
 Re-referred to APPROPRIATIONS, Feb. 4, 1997
 Re-reported as committed, Feb. 10, 1997
 Second consideration, Feb. 10, 1997
 Third consideration, with amendments, Feb. 11, 1997
 Final passage, Feb. 11, 1997 (203-0)
 (Remarks see House Journal Page 170-174), Feb. 11, 1997
 In the Senate
 Referred to AGING AND YOUTH, Feb. 13, 1997
 Reported as amended, March 12, 1997
 First consideration, March 12, 1997
 Re-referred to APPROPRIATIONS, March 17, 1997
 Re-reported as amended, April 28, 1997
 Second consideration, April 30, 1997
 Third consideration and final passage, May 13, 1997 (49-0)
 (Remarks see Senate Journal Page 598), May 13, 1997
 In the House
 Referred to RULES, May 13, 1997
 Reported as committed, June 2, 1997
 House concurred in Senate amendments, June 2, 1997 (194-0)
 Signed in House, June 2, 1997
 Signed in Senate, June 3, 1997
 In hands of the Governor, June 4, 1997
 Last day for action, June 14, 1997
 Approved by the Governor, June 9, 1997
 Act No. 13

Mr. HORSEY. Mr. Speaker, HR 54, we voted on it. Is that resolution still open for people to sign on? Closed?

The SPEAKER. Yesterday, yesterday, the resolution was held open for additional sponsors. Today it was passed. It is in print. Additional sponsors cannot be added to it once it has been put into print, unless it is amended, but it cannot be amended now because we have already passed it.

Mr. HORSEY. Oh, okay. Thank you, Mr. Speaker.

The SPEAKER. You are quite welcome.

Mr. HORSEY. My comments are on the record, so thank you, Mr. Speaker.

BILLS SIGNED BY SPEAKER

Bills numbered and entitled as follows having been prepared for presentation to the Governor, and the same being correct, the titles were publicly read as follows:

HB 26, PN 30

An Act providing for alternatives to achieve 180 days of instruction for school districts of the third class affected by flash floods occurring July 19, 1996.

SB 178, PN 390

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for the number of judges of the courts of common pleas in certain judicial districts and for the number of judges of the Philadelphia Municipal Court and the Philadelphia Traffic Court.

Whereupon, the Speaker, in the presence of the House, signed the same.

RECESS

The SPEAKER. Do the Republican floor leaders have any further business? Do the Democratic floor leaders have any further business? Any announcements? Do the committee chairmen have announcements? Reports of committees? Corrections of the record?

Hearing none, this House stands in recess until 2:30, unless sooner recalled by the Speaker.

AFTER RECESS

The time of recess having expired, the House was called to order.

ETHICS COMMITTEE APPOINTMENTS

The SPEAKER. The Speaker has made the following appointments to the Ethics Committee for the 1997-98 legislative sessions:

J. Scot Chadwick, chairman;
Sandra Major, secretary;
Patrick Fleagle; and
Robert Flick.

Additionally, the Democratic leader has made the following appointments:

William W. Rieger, vice chairman;
Jeffrey W. Coy;
Robert C. Donatucci; and
Michael R. Veon.

BILL REPORTED FROM COMMITTEE, CONSIDERED FIRST TIME, AND Tabled

HB 329, PN 357

By Rep. HERSHEY

An Act amending the act of July 28, 1953 (P.L. 723, No. 230), known as the Second Class County Code, further providing for the membership of boards of managers for monuments and memorials to war veterans.

VETERANS AFFAIRS AND EMERGENCY
PREPAREDNESS.

CALENDAR CONTINUED

BILLS ON THIRD CONSIDERATION

The House proceeded to third consideration of HB 132, PN 268, entitled:

An Act amending the act of November 6, 1987 (P.L. 381, No. 79), known as the Older Adults Protective Services Act, adding certain definitions; further providing for reporting, for investigations and for reporting suspected abuse by employees.

On the question,
Will the House agree to the bill on third consideration?

Mrs. VANCE offered the following amendment No. A0122:

Amend Sec. 1 (Sec. 103), page 2, by inserting between lines 12 and 13 "Serious physical injury." An injury that:

(1) causes a person severe pain; or

(2) significantly impairs a person's physical functioning, either temporarily or permanently.

Amend Sec. 3, page 12, by inserting between lines 26 and 27

Section 707. Regulations.

The Department of Aging, the Department of Health and the Department of Public Welfare shall promulgate the regulations necessary to carry out this chapter.

On the question,
Will the House agree to the amendment?

The SPEAKER. The Chair recognizes the lady, Mrs. Vance.
Mrs. VANCE. Thank you, Mr. Speaker.

This amendment adds a definition of "Serious physical injury" and also requires the Departments of Aging, Welfare, and Health to work together to promulgate the regulations, and I ask for an affirmative vote.

On the question recurring,
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—203

Adolph	Donatucci	Maitland	Saylor
Allen	Druce	Major	Schroder
Argall	Eachus	Manderino	Schuler
Armstrong	Egolf	Markosek	Scrimenti
Baker	Evans	Marsico	Semmel
Bard	Fairchild	Masland	Serafini
Barley	Fargo	Mayernik	Seyfert
Barrar	Feese	McCall	Shaner
Battisto	Fichter	McGeehan	Smith, B.
Bebko-Jones	Fleagle	McGill	Smith, S. H.
Belardi	Flick	McIlhattan	Snyder, D. W.
Belfanti	Gannon	McNaughton	Staback
Benninghoff	Geist	Melio	Stairs
Birmelin	George	Michlovic	Steelman
Bishop	Gigliotti	Micozzie	Steil
Blaum	Gladeck	Mihalich	Stern
Boscola	Godshall	Miller	Stetler
Boyes	Gordner	Mundy	Stevenson
Brown	Gruitza	Myers	Srittmatter
Browne	Gruppo	Nailor	Sturla
Bunt	Habay	Nickol	Surra
Butkovitz	Haluska	O'Brien	Tangretti
Buxton	Hanna	Olasz	Taylor, E. Z.
Caltagirone	Harhart	Oliver	Taylor, J.
Cappabianca	Hasay	Orie	Thomas
Carr	Hennessey	Perzel	Tigue
Carone	Herman	Pesci	Travaglio
Casorio	Hershey	Petrarca	Trello
Cawley	Hess	Petrone	Trich
Chadwick	Horsey	Petit	True
Civera	Hutchinson	Phillips	Tulli
Clark	Itkin	Pippy	Vance
Clymer	Jadlowiec	Pistella	Van Home
Cohen, L. I.	James	Platts	Veon
Cohen, M.	Jarolin	Preston	Vitali
Colaella	Josephs	Ramos	Walko
Colaizzo	Kaiser	Raymond	Washington
Conti	Keller	Readshaw	Waugh
Cornell	Kenney	Reber	Williams, A. H.
Corpora	Kirkland	Reinard	Williams, C.
Corrigan	Krebs	Rieger	Wilt
Cowell	LaGrotta	Roberts	Wogan
Coy	Laughlin	Robinson	Wojnaroski
Curry	Lawless	Roebuck	Wright, M. N.
Daley	Lederer	Rohrer	Yewcic
Dally	Leh	Rooney	Youngblood
DeLuca	Lescovitz	Ross	Zimmerman
Dempsey	Levdansky	Rubley	Zug
Dent	Lloyd	Sainato	
Dermody	Lucyk	Santoni	Ryan,
DeWeese	Lynch	Sather	Speaker
DiGirolamo			

NAYS—0

NOT VOTING—0

EXCUSED—0

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question,

Will the House agree to the bill on third consideration as amended?

Mrs. VANCE offered the following amendment No. A0156.

Amend Sec. 2 (Sec. 503), page 4, lines 2 and 3, by inserting a bracket before "UNDER" in line 2 and after "OFFENSES):" in line 3 and inserting immediately thereafter

of any of the following offenses:

Amend Sec. 2 (Sec. 503), page 4, lines 4 and 5, by striking out the bracket after "MURDER." in line 4 and all of line 5

Amend Sec. 2 (Sec. 503), page 4, lines 27 and 28, by striking out the bracket before "CHAPTER" in line 27 and after "(B)." in line 28

Amend Sec. 2 (Sec. 503), page 5, line 20, by inserting a bracket after "MINORS)." and inserting immediately thereafter

(1) An offense designated as a felony under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(2) An offense under one or more of the following provisions of 18 Pa.C.S. (relating to crimes and offenses):

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 3301 (relating to arson and related offenses).

Section 3502 (relating to burglary).

Section 3701 (relating to robbery).

A felony offense under Chapter 39 (relating to theft and related offenses) or two or more misdemeanors under Chapter 39:

Section 4101 (relating to forgery).

Section 4114 (relating to securing execution of documents by deception).

Section 4303 (relating to concealing death of child).

Section 4304 (relating to endangering welfare of children).

Section 4305 (relating to dealing in infant children).

Section 4952 (relating to intimidation of witnesses or victims).

Section 4953 (relating to retaliation against witness or victim).

A felony offense under section 5902(b) (relating to prostitution and related offenses).

Section 5903(c) or (d) (relating to obscene and other sexual materials and performances).

Section 6301 (relating to corruption of minors).

Section 6312 (relating to sexual abuse of children).

On the question,

Will the House agree to the amendment?

The SPEAKER. The Chair recognizes the lady.

Mrs. VANCE. Thank you, Mr. Speaker.

This further clarifies those criminal convictions which will preclude an individual from employment and does remove the 10-year window, and I ask for a favorable consideration.

On the question recurring,

Will the House agree to the amendment?

The following roll call was recorded:

YEAS—203

Adolph	Donatucci	Maitland	Saylor
Allen	Druce	Major	Schroder
Argall	Eachus	Manderino	Schuler
Armstrong	Egolf	Markosek	Scrimenti
Baker	Evans	Marsico	Semmel
Bard	Fairchild	Masland	Serafini
Barley	Fargo	Mayernik	Seyfert
Barrar	Feese	McCall	Shaner
Battisto	Fichter	McGeehan	Smith, B.
Bebko-Jones	Fleagle	McGill	Smith, S. H.
Belardi	Flick	McIlhattan	Snyder, D. W.
Belfanti	Gannon	McNaughton	Staback
Benninghoff	Geist	Melio	Stairs
Birmelin	George	Michlovic	Steelman
Bishop	Gigliotti	Micozzie	Steil
Blaum	Gladeck	Mihalich	Stern
Boscola	Godshall	Miller	Stetler
Boyes	Gordner	Mundy	Stevenson
Brown	Gruitza	Myers	Struttmatter
Browne	Gruppo	Nailor	Sturla
Bunt	Habay	Nickol	Surra
Butkovitz	Haluska	O'Brien	Tangretti
Buxton	Hanna	Olasz	Taylor, E. Z.
Caltagirone	Harhart	Oliver	Taylor, J.
Cappabianca	Hasay	Orie	Thomas
Cam	Hennessey	Perzel	Tigue
Carone	Herman	Pesci	Travaglio
Casorio	Hershey	Petrarca	Trello
Cawley	Hess	Petrone	Trich
Chadwick	Horsey	Pettit	True
Civera	Hutchinson	Phillips	Tulli
Clark	Itkin	Pippy	Vance
Clymer	Jadowiec	Pistella	Van Home
Cohen, L. I.	James	Platts	Veon
Cohen, M.	Jarolin	Preston	Vitali
Colafrilla	Josephs	Ramos	Walko
Colaizzo	Kaiser	Raymond	Washington
Conti	Keller	Readshaw	Waugh
Cornell	Kenney	Reber	Williams, A. H.
Corpora	Kirkland	Reinard	Williams, C.
Corrigan	Krebs	Rieger	Wilt
Cowell	LaGrotta	Roberts	Wogan
Coy	Laughlin	Robinson	Wojnaroski
Curry	Lawless	Roebuck	Wright, M. N.
Daley	Lederer	Rohrer	Yewcic
Dally	Leh	Rooney	Youngblood
DeLuca	Lescovitz	Ross	Zimmerman
Dempsey	Levdansky	Rublely	Zug
Dent	Lloyd	Sainato	
Dermody	Lucyk	Santoni	Ryan.
DeWeese	Lynch	Sather	Speaker
DiGirolamo			

NAYS—0

NOT VOTING—0

EXCUSED—0

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question recurring,
Will the House agree to the bill on third consideration as amended?

Mr. BLAUM offered the following amendment No. A0155:

Amend Sec. 2 (Sec. 503), page 4, line 2, by inserting a bracket before "UNDER"

Amend Sec. 2 (Sec. 503), page 4, line 3, by inserting after "OFFENSES):"

] of any of the following offenses:

Amend Sec. 2 (Sec. 503), page 4, line 4, by striking out the bracket after "MURDER."

Amend Sec. 2 (Sec. 503), page 4, line 27, by striking out the bracket before "CHAPTER"

Amend Sec. 2 (Sec. 503), page 4, line 28, by striking out the bracket after "(B)."

Amend Sec. 2 (Sec. 503), page 5, line 20, by inserting a bracket after "MINORS)."

Amend Sec. 2 (Sec. 503), page 5, by inserting between lines 20 and 21

(1) An offense designated as a felony under the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(2) An offense under one or more of the following provisions of 18 Pa.C.S. (relating to crimes and offenses):

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

Section 3121 (relating to rape).

Section 3122 (relating to statutory rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 3301 (relating to arson and related offenses).

Section 3502 (relating to burglary).

Section 3701 (relating to robbery).

A felony offense under Chapter 39 (relating to theft and related offenses) or two or more misdemeanors under Chapter 39.

Section 4101 (relating to forgery).

Section 4302 (relating to incest).

Section 4304 (relating to endangering the welfare of children).

Section 4305 (relating to dealing in infant children).

Section 4953 (relating to retaliation against a witness or victim).

A felony offense under section 5902(b) (relating to prostitution and related offenses).

Section 5903(c) or (d) (relating to obscene and other sexual materials and performances).

Section 6301 (relating to corruption of minors).

Section 6312 (relating to sexual abuse of children).

On the question,
Will the House agree to the amendment?

AMENDMENT WITHDRAWN

The SPEAKER. The gentleman, Mr. Blaum, withdraws that amendment.

On the question recurring,
Will the House agree to the bill on third consideration as amended?

Mr. VEON offered the following amendment No. A0160:

Amend Sec. 2, page 2, line 21, by inserting after "SECTIONS"
301(b),

Amend Sec. 2, page 2, by inserting between lines 23 and 24
Section 301. Duties of department and area agencies on aging.

(b) [Staff training.—The] Staffing for prevention of abuse.—

(1) The department shall establish minimum standards of training and experience which protective services providers funded by the department shall be required to follow in the selection and assignment of staff for the provision of protective services.

(2) Long-term care facilities, as defined under the act of July 19, 1979 (P.L. 130, No. 48), known as the Health Care Facilities Act, shall maintain two and one-half hours of general nursing care per each 24-hour period for each patient in the facility. The department shall enforce this provision.

On the question,
Will the House agree to the amendment?

The SPEAKER. The Chair recognizes Mr. Veon.
Mr. VEON. Thank you, Mr. Speaker.

Mr. Speaker, if you read the language of the amendment, I think that some members would suggest that we are attempting to deal with some minor details and minutia of the law that governs how many nurses we ought to have in nursing homes in the State of Pennsylvania, and I would like to characterize my amendment as simply as I can.

The intent or the intention of this amendment is to increase the number of nursing hours and, ultimately, the number of nurses that take care of the elderly in nursing homes in the State of Pennsylvania. The Ridge administration over the last year, I think, as some of us are well aware, has made some significant changes to the way nursing homes are reimbursed in Pennsylvania, and there has been a lot of debate and discussion within the nursing-home industry about whether those changes are positive or negative.

The one change that I have taken issue with is the change to reduce the number of nursing hours required in the nursing homes, and to make a long story short, they reduced it to 2.3 hours. In my amendment, what I would attempt to do is make it 2.5 hours, and ultimately, my belief is that we would require more nurses at the nursing home.

I know that some members on both sides of the aisle over the last few years had participated in a program that I did, and that program was to literally go to nursing homes to meet with the staff, to in some cases even work right alongside with the staff. And I think that any one of us who took that opportunity over the last few years to go into those nursing homes would immediately recognize that there is a tremendous staff shortage in most nursing homes on most shifts on any given day, and that ultimately, I really would like the legislature, I hope, to speak on this issue and set stronger standards for the number of nurses that we have in nursing homes in the State of Pennsylvania, and I would ask for an affirmative vote.

The SPEAKER. The Chair recognizes the lady, Mrs. Vance.

Mrs. VANCE. Thank you, Mr. Speaker.

As a former charge nurse in a nursing home, I have an intense and longtime interest in this issue. I rise to oppose this amendment for the following reasons.

First of all, the way the amendment is drafted, the Department of Aging is responsible for doing this, and so we are calling into effect the lottery funds. There is already in place that the Department of Health can increase the number of nursing personnel if it is indicated by the need for the welfare, health, or safety of the patients.

We have many questions about what is general nursing care. We have many different levels now. In fact, we have 44 different levels. So exactly what are we talking about? I think that the ability to change the number of nurses in a home is already existing, and I think what we are really talking about in the proposed amendment is a labor-management dispute, and I think this is something not to be resolved.

We are here to talk about preventing abuse in the elderly, and I ask for a negative vote.

The SPEAKER. The Chair thanks the lady.

On the question, does the gentleman, Mr. Veon, desire further recognition?

Mr. VEON. Thank you, Mr. Speaker.

Mr. Speaker, I know that the gentlelady, Representative Vance, has put a lot of time and effort into this issue and really has done a good job of bringing this issue, her particular issue, to the floor.

I just want to say again that I understand that her desire in this bill is to prevent abuse in nursing homes, and that part of the abuse in nursing homes, in my opinion anyhow, over the last 4 or 5 years, in some cases, is a direct result of lack of adequate care in those nursing homes. And I really do believe that it is a role of this legislature to determine, for the administration and ultimately for the nursing homes that we license under a law that this legislature passes, to determine what kind of quality care we are going to have there, and I just have a sincere and firm belief that part of that quality-care equation ought to be how many nurses we have in these nursing homes.

I think this is a legitimate issue for this legislature and would ask for an affirmative vote. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The lady, Mrs. Vance, for the second time on the issue.

Mrs. VANCE. Just as a quick repeat, Mr. Speaker, thank you.

The number of nurses does not prevent abuse. What we have to have is this legislation which puts into effect that one must report abuse. This is talking about mandatory reporting of abuse with whistle-blower protection.

I thank you and ask for a negative vote.

On the question recurring,
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—101

Battisto	Donatucci	Lucyk	Sainato
Bebko-Jones	Eachus	Manderino	Santoni
Belardi	Evans	Markosek	Scrimenti
Belfanti	George	Mayernik	Shaner
Bishop	Gigliotti	McCall	Staback

Blaum	Gordner	McGeehan	Steelman
Boscola	Gruitza	Melio	Stetler
Butkovitz	Haluska	Michlovic	Sturla
Buxton	Hanna	Mihalich	Surra
Caltagirone	Hasay	Mundy	Tangretti
Cappabianca	Horsey	Myers	Thomas
Cam	Itkin	Olasz	Tigue
Casorio	James	Oliver	Travaglio
Cawley	Jarolin	Pesci	Trello
Cohen, M.	Josephs	Petrarca	Trich
Colafiglia	Kaiser	Petrone	Van Horne
Colaizzo	Keiler	Pistella	Veon
Corpora	Kirkland	Preston	Vitali
Corrigan	LaGrotta	Ramos	Walko
Cowell	Laughlin	Readshaw	Washington
Coy	Lawless	Rieger	Williams, A. H.
Curry	Lederer	Roberts	Williams, C.
Daley	Lescovitz	Robinson	Wojnaroski
DeLuca	Levdansky	Roebuck	Yewcic
Dermody	Lloyd	Rooney	Youngblood

NAYS-102

Adolph	Druce	Major	Schuler
Allen	Egolf	Marsico	Semmel
Argall	Fairchild	Masland	Serafini
Armstrong	Fargo	McGill	Seyfert
Baker	Feese	McIlhatten	Smith, B.
Bard	Fichter	McNaughton	Smith, S. H.
Barley	Fleagle	Micozzie	Snyder, D. W.
Barrar	Flick	Miller	Stairs
Benninghoff	Gannon	Nailor	Steil
Birmelin	Geist	Nickol	Stern
Boyes	Gladeck	O'Brien	Stevenson
Brown	Godshall	Orie	Strittmatter
Browne	Gruppo	Perzel	Taylor, E. Z.
Bunt	Habay	Pettit	Taylor, J.
Carone	Harhart	Phillips	True
Chadwick	Hennessey	Pippy	Tulli
Civera	Herman	Platts	Vance
Clark	Hershey	Raymond	Waugh
Clymer	Hess	Reber	Wilt
Cohen, L. I.	Hutchinson	Reinard	Wogan
Conti	Jadlowiec	Rohrer	Wright, M. N.
Cornell	Kenney	Ross	Zimmerman
Dally	Krebs	Rubley	Zug
Dempsey	Leh	Sather	
Dent	Lynch	Saylor	Ryan,
DiGirolamo	Maitland	Schroder	Speaker

NOT VOTING-0

EXCUSED-0

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

On the question recurring,
Will the House agree to the bill on third consideration as amended?
Bill as amended was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

YEAS-203

Adolph	Donatucci	Maitland	Saylor
Allen	Druce	Major	Schroder
Argall	Eachus	Manderino	Schuler
Armstrong	Egolf	Markosek	Scrimenti
Baker	Evans	Marsico	Semmel
Bard	Fairchild	Masland	Serafini
Barley	Fargo	Mayernik	Seyfert
Barrar	Feese	McCall	Shaner
Battisto	Fichter	McGeehan	Smith, B.
Bebko-Jones	Fleagle	McGill	Smith, S. H.
Belardi	Flick	McIlhatten	Snyder, D. W.
Belfanti	Gannon	McNaughton	Staback
Benninghoff	Geist	Melio	Stairs
Birmelin	George	Michlovic	Steelman
Bishop	Gigliotti	Micozzie	Steil
Blaum	Gladeck	Mihalich	Stern
Boscola	Godshall	Miller	Stetler
Boyes	Gordner	Mundy	Stevenson
Brown	Gruitza	Myers	Strittmatter
Browne	Gruppo	Nailor	Sturla
Bunt	Habay	Nickol	Surra
Butkovitz	Haluska	O'Brien	Tangretti
Buxton	Hanna	Olasz	Taylor, E. Z.
Caltagirone	Harhart	Oliver	Taylor, J.
Cappabianca	Hasay	Orie	Thomas
Cam	Hennessey	Perzel	Tigue
Carone	Herman	Pesci	Travaglio
Casorio	Hershey	Petrarca	Trello
Cawley	Hess	Petrone	Trich
Chadwick	Horsey	Pettit	True
Civera	Hutchinson	Phillips	Tulli
Clark	Itkin	Pippy	Vance
Clymer	Jadlowiec	Pistella	Van Horne
Cohen, L. I.	James	Platts	Veon
Cohen, M.	Jarolin	Preston	Vitali
Colafiglia	Josephs	Ramos	Walko
Colaizzo	Kaiser	Raymond	Washington
Conti	Keller	Readshaw	Waugh
Cornell	Kenney	Reber	Williams, A. H.
Corpora	Kirkland	Reinard	Williams, C.
Corrigan	Krebs	Rieger	Wilt
Cowell	LaGrotta	Roberts	Wogan
Coy	Laughlin	Robinson	Wojnaroski
Curry	Lawless	Roebuck	Wright, M. N.
Daley	Lederer	Rohrer	Yewcic
Dally	Leh	Rooney	Youngblood
DeLuca	Lescovitz	Ross	Zimmerman
Dempsey	Levdansky	Rubley	Zug
Dent	Lloyd	Sainato	
Dermody	Lucyk	Santoni	Ryan,
DeWeese	Lynch	Sather	Speaker
DiGirolamo			

NAYS-0

NOT VOTING-0

EXCUSED-0

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

H0132B0268A0155 DGS:DF 02/10/97 #90 A0155
 AMENDMENTS TO HOUSE BILL NO. 132
 Sponsor: REPRESENTATIVE BLAUM
 Printer's No. 268

1 Amend Sec. 2 (Sec. 503), page 4, line 2, by inserting a
 2 bracket before "UNDER"
 3 Amend Sec. 2 (Sec. 503), page 4, line 3, by inserting after
 4 "OFFENSES):"
 5] of any of the following offenses:
 6 Amend Sec. 2 (Sec. 503), page 4, line 4, by striking out the
 7 bracket after "MURDER."
 8 Amend Sec. 2 (Sec. 503), page 4, line 27, by striking out the
 9 bracket before "CHAPTER"
 10 Amend Sec. 2 (Sec. 503), page 4, line 28, by striking out the
 11 bracket after "(B)."
 12 Amend Sec. 2 (Sec. 503), page 5, line 20, by inserting a
 13 bracket after "MINORS)."
 14 Amend Sec. 2 (Sec. 503), page 5, by inserting between lines
 15 20 and 21
 16 (1) An offense designated as a felony under the act of
 17 April 14, 1972 (P.L.233, No.64), known as The Controlled
 18 Substance, Drug, Device and Cosmetic Act.
 19 (2) An offense under one or more of the following
 20 provisions of 18 Pa.C.S. (relating to crimes and offenses):
 21 Chapter 25 (relating to criminal homicide.
 22 Section 2702 (relating to aggravated assault).
 23 Section 2901 (relating to kidnapping).
 24 Section 2902 (relating to unlawful restraint).
 25 Section 3121 (relating to rape).
 26 Section 3122 (relating to statutory rape).
 27 Section 3122.1 (relating to statutory sexual assault).
 28 Section 3123 (relating to involuntary deviate sexual
 29 intercourse).

1 Section 3124.1 (relating to sexual assault).
 2 Section 3125 (relating to aggravated indecent assault).
 3 Section 3126 (relating to indecent assault).
 4 Section 3301 (relating to arson and related offenses).
 5 Section 3502 (relating to burglary).
 6 Section 3701 (relating to robbery).
 7 A felony offense under Chapter 39 (relating to theft and
 8 related offenses) or two or more misdemeanors under Chapter
 9 39.
 10 Section 4101 (relating to forgery).
 11 Section 4302 (relating to incest).
 12 Section 4304 (relating to endangering the welfare of
 13 children).
 14 Section 4305 (relating to dealing in infant children).
 15 Section 4953 (relating to retaliation against a witness
 16 or victim).
 17 A felony offense under section 5902(b) (relating to
 18 prostitution and related offenses).
 19 Section 5903(c) or (d) (relating to obscene and other
 20 sexual materials and performances).
 21 Section 6301 (relating to corruption of minors).
 22 Section 6312 (relating to sexual abuse of children).

B10L90DGS/HB0132A0155

- 2 -

H0132B0268A0156

DGS:MEB 02/10/97 #90

A0156

AMENDMENTS TO HOUSE BILL NO. 132

Sponsor: REPRESENTATIVE VANCE

Printer's No. 268

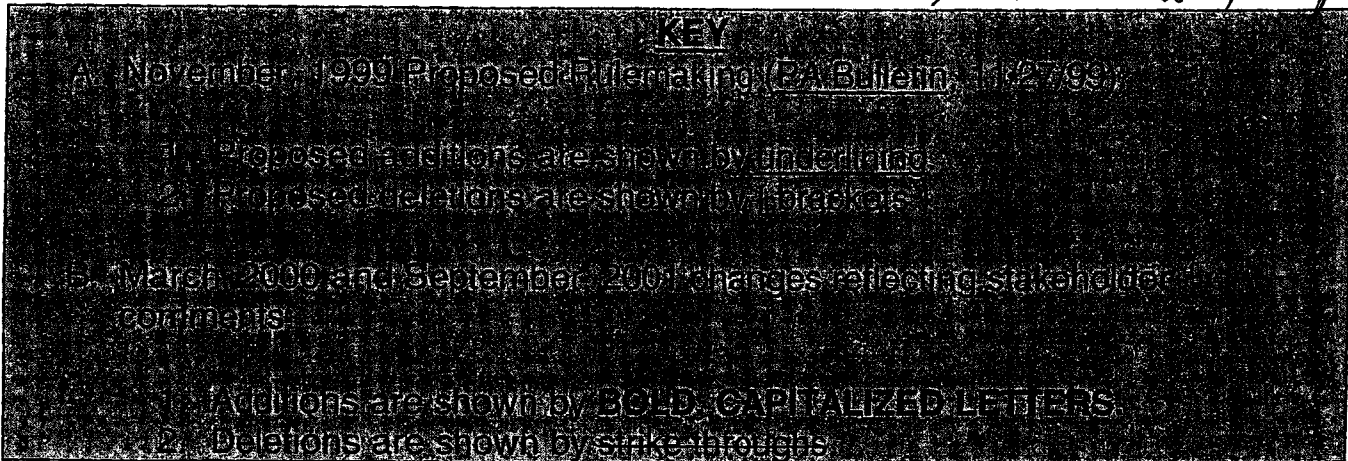
- 1 Amend Sec. 2 (Sec. 503), page 4, lines 2 and 3, by inserting
- 2 a bracket before "UNDER" in line 2 and after "OFFENSES):" in
- 3 line 3 and inserting immediately thereafter
- 4 of any of the following offenses:
- 5 Amend Sec. 2 (Sec. 503), page 4, lines 4 and 5, by striking
- 6 out the bracket after "MURDER)." in line 4 and all of line 5
- 7 Amend Sec. 2 (Sec. 503), page 4, lines 27 and 28, by striking
- 8 out the bracket before "CHAPTER" in line 27 and after "(B)." in
- 9 line 28
- 10 Amend Sec. 2 (Sec. 503), page 5, line 20, by inserting a
- 11 bracket after "MINORS)." and inserting immediately thereafter
- 12 (1) An offense designated as a felony under the act of
- 13 April 14, 1972 (P.L.233, No.64), known as The Controlled
- 14 Substance, Drug, Device and Cosmetic Act.
- 15 (2) An offense under one or more of the following
- 16 provisions of 18 Pa.C.S. (relating to crimes and offenses):
- 17 Chapter 25 (relating to criminal homicide).
- 18 Section 2702 (relating to aggravated assault).
- 19 Section 2901 (relating to kidnapping).
- 20 Section 2902 (relating to unlawful restraint).
- 21 Section 3121 (relating to rape).
- 22 Section 3122.1 (relating to statutory sexual
- 23 assault).
- 24 Section 3123 (relating to involuntary deviate sexual
- 25 intercourse).
- 26 Section 3125 (relating to aggravated indecent
- 27 assault).
- 28 Section 3126 (relating to indecent assault).
- 29 Section 3127 (relating to indecent exposure).
- 30 Section 3301 (relating to arson and related
- 31 offenses).
- 32 Section 3502 (relating to burglary).
- 33 Section 3701 (relating to robbery).

- 1 A felony offense under Chapter 39 (relating to theft
- 2 and related offenses) or two or more misdemeanors under
- 3 Chapter 39.
- 4 Section 4101 (relating to forgery).
- 5 Section 4114 (relating to securing execution of
- 6 documents by deception).
- 7 Section 4303 (relating to concealing death of child).
- 8 Section 4304 (relating to endangering welfare of
- 9 children).
- 10 Section 4305 (relating to dealing in infant
- 11 children).
- 12 Section 4952 (relating to intimidation of witnesses
- 13 or victims).
- 14 Section 4953 (relating to retaliation against witness
- 15 or victim).
- 16 A felony offense under section 5902(b) (relating to
- 17 prostitution and related offenses).
- 18 Section 5903(c) or (d) (relating to obscene and other
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- 21 Section 6312 (relating to sexual abuse of children).

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See 15.131 -138 excerpt



Title 6. Aging

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CRIMINAL HISTORY RECORD INFORMATION REPORTS

§ 15.131. Prospective facility personnel.

(a) General rule - A facility, as defined in § 15.2, shall require all applicants for employment to submit with their applications the following WITH A criminal history record information REPORT, obtained within the one-year ONE YEAR period immediately preceding the date of application, as appropriate OR AS SET FORTH AT §15.134 (RELATING TO PROCEDURES), AS FOLLOWS:

(1) State Police report CRIMINAL HISTORY RECORD - Facilities shall require all applicants to submit a report of STATE POLICE criminal history record information obtained from the State Police or a written statement from the State Police that their central repository contains no such information relating to such applicant.

(2) FEDERAL CRIMINAL HISTORY RECORD. IF THE APPLICANT IS NOT AND FOR THE TWO YEARS IMMEDIATELY PRECEDING THE DATE OF APPLICATION HAS NOT BEEN A RESIDENT OF THIS COMMONWEALTH, THE FACILITY SHALL REQUIRE THE APPLICANT FBI report - Facilities shall require all applicants, who are not residents of Pennsylvania or have not resided in Pennsylvania for an uninterrupted period of two years preceding the date of application to the facility, to submit a n FBI FEDERAL criminal history record information report pursuant to the FBI's appropriation under the Departments of State, Justice and Commerce, the Judiciary and Related Agencies Appropriation Act of 1978 (Public Law 92-544, 86 Stat. 1109).

(3) Fingerprints. Applicants required to submit an FBI criminal history record information report shall submit AND a full set of fingerprints to the Department which will be forwarded to the FBI FEDERAL BUREAU OF INVESTIGATION, to comply with the requirement of this subsection.

(b) Proof of residency - Facilities may require an applicant to furnish proof of residency, including, but not limited to, ANY ONE OF the following documentationS, one or more of which shall be considered reasonable proof of residency:

(1) Motor vehicle records, such as a valid driver's license.

(2) Housing records, such as mortgage records, rent receipts or certification of residency in a nursing home.

(3) Public utility records and receipts, such as electric bills.

(4) Local tax records.

(5) A completed and signed, Federal, State or local income tax return with the applicant's name and address preprinted on it.

(6) Records of contacts with public or private social agencies.

~~(7)~~ (6) Employment records, including records of unemployment compensation.

§ 15.132 Facility personnel EMPLOYEE requirements.

(a)- The following facility personnel EMPLOYEES are required to submit A criminal history record information REPORT, as described in Section 15.131 (Relating to prospective facility personnel):

~~(1) Persons serving as facility administrators and operators on July 1, 1998 who have direct contact with clients and were employed by the facility as administrators and operators for a period of less than one year of continuous employment shall comply with resident and, as applicable, non-resident criminal history record information REPORT requirements by July 1, 1999.~~

~~(2) Administrators and operators who have direct contact with clients and who began serving as administrators and operators after July 1, 1998, shall comply with the criminal history record information REPORT requirements within 90 30 days from the date of employment~~
PENNSYLVANIA RESIDENTS SHALL COMPLY WITHIN THIRTY DAYS OF EMPLOYMENT AND NON-RESIDENTS SHALL COMPLY WITHIN NINETY DAYS.

~~(3) Employees of a facility on July 1, 1998, who were employed by the facility for a period of less than one year of continuous employment shall comply with the criminal history record information REPORT requirements by July 1, 1999.~~

~~(4) (2) EMPLOYEES OF A FACILITY WHO WERE EMPLOYED AFTER JULY 1, 1998. PENNSYLVANIA RESIDENTS SHALL COMPLY WITHIN THIRTY DAYS OF EMPLOYMENT AND NON-RESIDENTS SHALL COMPLY WITHIN NINETY DAYS.~~

~~(4) (3) Exceptions:~~

~~(i) Employees of the facility on July 1, 1998, who were employed by the facility for a continuous period of at least one year prior to July 1, 1998 are exempt from the requirements of this section.~~

~~(ii) Employees who have complied with the requirements of this section who transfer to another facility established or supervised, or both, by the same operator are exempt from compliance with the requirements of Section 15.131.~~

~~(iii) EMPLOYEES WHO ARE EMPLOYED BY A NEW FACILITY SOLELY THROUGH A TRANSFER OF OWNERSHIP OF THAT FACILITY.~~

~~(iv) A CONSUMER ATTENDANT.~~

- (v) AN INDIVIDUAL PROVIDING CARE TO A CARE-DEPENDENT PERSON, AND EMPLOYED BY THE CARE-DEPENDENT PERSON, OR BY ANOTHER PERSON DESIGNATED BY THE CARE-DEPENDENT PERSON, AND NOT BY OR THROUGH A HOME HEALTH CARE AGENCY.
- (vi) AN INDIVIDUAL, EMPLOYED BY AN ENTERPRISE THAT OPERATES FACILITIES AND NON FACILITIES IN THE SAME PHYSICAL LOCATION, WHO HAS NO EMPLOYMENT RESPONSIBILITIES IN THE FACILITY (EXAMPLE: AN INDIVIDUAL EMPLOYED BY A HOSPITAL WHICH ALSO HAS WITHIN IT A LONG-TERM CARE NURSING UNIT. THE INDIVIDUAL IS EMPLOYED TO WORK IN THE HOSPITAL).
- (vii) A CONTRACT EMPLOYEE WHO HAS NEITHER DIRECT CONTACT WITH RESIDENTS IN A FACILITY NOR UNSUPERVISED ACCESS.
- (viii) AN INDIVIDUAL, EMPLOYED BY A HOME HEALTH AGENCY OR OTHER ENTITY THAT SUPPLIES, ARRANGES FOR, OR REFERS PERSONNEL TO PROVIDE CARE TO CARE-DEPENDENT PERSONS, WHO IS EMPLOYED FOR PURPOSES OTHER THAN PROVIDING CARE IN A FACILITY OR IN A RECIPIENT'S PLACE OF RESIDENCE (EXAMPLE: AN INDIVIDUAL EMPLOYED AS A BOOKKEEPER BY AN AGENCY WHICH SUPPLIES HOMEMAKER/HOME HEALTH AIDES).
- (ix) AN INDIVIDUAL FUNCTIONING IN A FACILITY AS A VOLUNTEER.

~~(5) (b) Employees at facilities which THAT supply, arrange for, or refer their employees to provide care, as defined in this chapter, in other facilities shall comply with criminal history record information requirements in paragraph (3) by providing~~ **E A criminal history record information REPORT to the facility which THAT supplies, arranges for, or refers them AND TO THE FACILITY AT WHICH THEY PROVIDE CARE.** ~~The grandfathering and transfer exemptions OF THIS SECTION in paragraph (4) also, as ARE applicable, apply to these employees. (Example: Employees of a home health care staffing agency assigned by the agency to provide care in a long-term care nursing facility must provide A criminal history record information REPORT to the staffing agency AND TO THE LONG-TERM CARE NURSING FACILITY).~~ **THE STAFFING AGENCY SHALL BE RESPONSIBLE FOR NOTIFYING THE EMPLOYEE OF CRIMINAL HISTORY REPORT REQUIREMENTS.**

~~(6) Exceptions: Employees referenced in (5) who have complied with applicable criminal history record information requirements in accordance~~

~~with this Chapter are not required to submit criminal history record information to the facilities to which they are supplied, referred, or for which their services are arranged.~~

~~(b) Employees are responsible for determining whether they are required to obtain a criminal history record information report as required by this Section. If an employee fails to comply with the requirements of this Section and is subsequently terminated for failure to comply within the required time period, the facility cannot be held liable for failure to inform the employee of his obligations under this Section.~~

(c) CRIMINAL HISTORY REPORTS PROVIDED BY THE PENNSYLVANIA DEPARTMENT OF EDUCATION, PURSUANT TO THE NURSE AIDE RESIDENT ABUSE PREVENTION TRAINING ACT (63 P.S. §§671-680), WHICH MEET THE CRITERIA ESTABLISHED IN THIS CHAPTER MAY BE ACCEPTED TO SATISFY THE REQUIREMENTS OF THIS CHAPTER.

§ 15.133 Facility responsibilities

~~(a) A facility shall not hire an applicant nor retain an employee required to submit a criminal history record information report where **IF** the **CRIMINAL HISTORY** report reveals a felony conviction under the act of April 14, 1972 (P.S. 238, No. 64) known as The Controlled Substance, Drug, Device or **AND** Cosmetic Act (35 P.S. §§780—101—780—149144).~~

~~(b) A facility shall not hire an applicant nor retain any employee required to submit a criminal history record information report where **IF** the **CRIMINAL HISTORY** report reveals a conviction under one or more of the **FOLLOWING** provisions of 18 Pa.C.S. (relating to the Crimes Code):~~

~~Chapter 25 (relating to criminal homicide).~~

~~§ 2702 (relating to aggravated assault).~~

~~§ 2901 (relating to kidnapping).~~

~~§ 2902 (relating to unlawful restraint).~~

~~§ 3121 (relating to rape).~~

~~§ 3122.1 (relating to statutory sexual assault).~~

~~§ 3123 (relating to involuntary deviate sexual intercourse).~~

~~§ 3124.1 (relating to sexual assault).~~

~~§ 3125 (relating to aggravated indecent assault).~~

~~§ 3126 (relating to indecent assault).~~

~~§ 3127 (relating to indecent exposure).~~

~~§ 3301 (relating to arson and related offenses).~~

~~§ 3502 (relating to burglary).~~

~~§ 3701 (relating to robbery).~~

~~A felony offense under Chapter 39 (relating to theft and related offenses), or two or more misdemeanors under Chapter 39. § 4104 (relating to forgery).~~

~~§ 4114 (relating to securing execution of documents by deception).~~

~~§ 4302 (relating to incest).~~

~~§ 4303 (relating to concealing death of child).~~

~~§ 4304 (relating to endangering welfare of children).~~

~~§ 4305 (relating to dealing in infant children).~~

~~§ 4952 (relating to intimidation of witnesses or victims).~~

~~§ 4953 (relating to retaliation against witness or victim).~~

~~A felony offense under § 5902(b) (relating to prostitution and related offenses).~~

~~§ 5903(c) or (d) (relating to obscene and other sexual materials and performances).~~

~~§ 6301 (relating to corruption of minors).~~

~~§ 6312 (relating to sexual abuse of children).~~

~~(1) — If a facility receives a report from the State Police showing open disposition for a crime which would prohibit hiring an applicant or retaining an employee, the administrator or designee shall require the applicant or employee to obtain and submit court documents showing disposition within 60 days of receipt of the original report. Failure to provide court documents as required will result in an administrative prohibition against hiring or retention. If the reason for open disposition is court scheduling, the administrator or designee shall check status every 30 days until a court date is set and, thereafter, as appropriate in order to receive the disposition as soon as possible.~~

~~(d)(e) A facility shall not hire an applicant nor retain an employee required to submit a criminal history record information report when IF the criminal background check reports **CRIMINAL HISTORY REPORT REVEALS** conviction of a Federal or out-of-state offense similar in nature, as determined by the Department, to those listed in subsections (a) and (b).~~

~~(e)(d) A facility shall ensure that applicant **OR EMPLOYEE** responsibility to obtain criminal history record check(s) **REPORTS** is explained to each applicant **OR EMPLOYEE** orally **AND IN WRITING** in a language understood by the applicant **OR EMPLOYEE**.~~

~~(f) (B) A facility shall ensure that information obtained from the criminal history record remains confidential and is used solely to determine an applicant's eligibility for employment. **FACILITIES SHALL MAINTAIN EMPLOYMENT RECORDS WHICH INCLUDE COPIES OF COMPLETED REQUEST FORMS FOR CRIMINAL HISTORY REPORTS, STATE POLICE CRIMINAL HISTORY RECORDS AND DEPARTMENT LETTERS OF DETERMINATION REGARDING FEDERAL CRIMINAL HISTORY RECORDS.**~~

~~(g) (C) Facilities, except those referenced in Section 15.132 (a)(6)) (relating to facility personnel requirements), shall maintain employment records which include a copy of the completed request form for the State Police criminal history record check or of the completed State Police criminal history record check, SP-4-64, issued in response to a request for a criminal background check. AN ADMINISTRATOR SHALL ASSURE THAT INFORMATION OBTAINED FROM STATE POLICE CRIMINAL HISTORY RECORDS AND DEPARTMENT LETTERS OF DETERMINATION REGARDING FEDERAL CRIMINAL HISTORY RECORDS REMAIN CONFIDENTIAL AND ARE USED SOLELY TO DETERMINE AN APPLICANT'S ELIGIBILITY FOR EMPLOYMENT OR AN EMPLOYEE'S ELIGIBILITY FOR RETENTION.~~

~~(h) (D) Facilities, except those referenced in Section 15.132 (a)(6)) (relating to facility personnel requirements), shall maintain employment records which include, as applicable, a copy of the completed request form for the FBI criminal history record check or a copy of the FBI criminal history record check form showing no convictions for one or more Federal or out-of-state offenses similar in nature to the provisions in subsection (b), as determined by the Department.~~

~~(i) Facilities at which care is provided by employees supplied, referred or arranged by other facilities shall, at a minimum, obtain from those other facilities written assurance that:~~

~~(1) Employees who are supplied, referred or arranged have complied with criminal history record information requirements in this Chapter.~~

~~(2) Employee criminal history record information will be made available when necessary.~~

IF THE DECISION NOT TO HIRE OR TO TERMINATE EMPLOYMENT IS BASED IN WHOLE OR IN PART ON STATE POLICE CRIMINAL HISTORY RECORDS, DEPARTMENT LETTERS OF DETERMINATION REGARDING FEDERAL CRIMINAL HISTORY RECORDS, OR BOTH, FACILITIES MUST PROVIDE APPLICANTS AND EMPLOYEES WITH INFORMATION ON HOW TO APPEAL TO THE SOURCES OF CRIMINAL HISTORY RECORDS IF THEY BELIEVE THE RECORDS ARE IN ERROR.

§ 15.134 Procedure.

~~(a) Applicants and facility personnel~~ **EMPLOYEES** ~~required to obtain a criminal history record information report from the State Police may obtain forms from a State Policy facility.~~

~~(1) The State Police may charge a fee of not more than \$10.00. A facility's check, cashier's check, certified check or money order shall accompany the request unless other payment arrangements are made with the State Police.~~

(2) Facilities may at their option require that applicants and facility personnel **EMPLOYEES TO** return the form to a designated individual for submission of the request by the facility.

(b) Applicants and facility personnel **EMPLOYEES** required to obtain a Federal criminal history record information report from the FBI shall obtain the information packet from the facility or contact the Department for instructions, all necessary forms and the required FBI fingerprint card.

(1) Applicants and facility personnel **EMPLOYEES** shall return the FBI **FEDERAL BUREAU OF INVESTIGATION** fingerprint card and forms, and a **CASHIER'S check, CERTIFIED CHECK, OR MONEY ORDER PAYABLE TO THE FEDERAL BUREAU OF INVESTIGATION** in an **THE EXACT** amount not to exceed the established fee set by the **FBI FEDERAL BUREAU OF INVESTIGATION**. Upon receipt, the Department will submit the request to the State Police within five working days for transfer to the **FBI FEDERAL BUREAU OF INVESTIGATION**. All checks should be written to the **FBI**.

(2) Upon receipt of the completed criminal history record information report from the **FBI FEDERAL BUREAU OF INVESTIGATION**, the Department will determine if the applicant is eligible for employment **OR IF THE EMPLOYEE MAY BE RETAINED**, and **THE DEPARTMENT** will contact the applicant **OR EMPLOYEE** with a written statement **LETTER OF DETERMINATION** within ten thirty working days.

~~(3) If the Department receives a report from the FBI showing open disposition for a crime which would prohibit hiring an applicant or retaining an employee, the Department shall require the applicant or employee to obtain and submit to the Department court documents showing disposition, within 60 days of the date the Department notifies the applicant or employee. Failure to provide court documents as required will result in an administrative prohibition against hiring or retention.~~

(C) APPLICANTS AND EMPLOYEES SHALL COMPLETE ALL NECESSARY FORMS. FACILITIES SHALL ASSIST AN APPLICANT OR EMPLOYEE COMPLY WITH THIS REQUIREMENT IF REQUESTED.

~~(D)(c) While submission of criminal history record information to facility administrators or their designees is the responsibility of the applicant ;~~ **f**Facility administrators may assume financial responsibility for the fees through a quarterly payment system.

~~(d) Applicants and facility personnel are responsible to fill out all necessary forms to comply with this section. Facilities shall assist an applicant or employee in complying with this requirement if requested.~~

~~(e) Applicants and facility personnel shall obtain both Pennsylvania and FBI criminal history record information reports obtained no longer than one year prior to their application for employment. Administrators, operators and non-exempt employees shall, within the time limits required for submitting~~

~~criminal checks, provide Pennsylvania and FBI checks obtained no longer than one year prior to their date of submission. If the date of the record report exceeds the one year prior to application for employment or the required date of submission for administrators, operators and non-exempt employees, a new clearance shall be obtained.~~

~~(f) (E) Applicants and facility personnel are~~ **EMPLOYEES ARE** responsible for reviewing all **THEIR OWN** criminal history record information reports for accuracy.

~~(g) Applicants and facility personnel may question the Department's determination by submitting a request for review within 30 days of receipt of the determination.~~

§ 15.135 Applicant OR EMPLOYEE rights of review.

~~(a) An applicant~~ **OR EMPLOYEE** may review, challenge and appeal the completeness or accuracy of the applicant's **OR EMPLOYEE'S** criminal history record information report under 18 Pa.C.S. Sections **9125, SECTIONS 9152-9183** (relating to the Criminal History Information Act), and, if applicable, **OR Federal regulations at 28 CFR Section 16.34, OR BOTH.**

~~(b) If an applicant's criminal history record is, as a result of a challenge by the applicant, changed so as to remove any disqualification for employment, a facility may reconsider the applicant's application for any positions available at that time.~~ **AN APPLICANT OR EMPLOYEE MAY CHALLENGE THE CONVICTION COMPARISON INTERPRETATION OF THE DEPARTMENT INVOLVING THE FEDERAL CRIMINAL HISTORY RECORD BY FILING AN APPEAL WITH THE DEPARTMENT UNDER 1 PA CODE CHAPTER 35 (RELATING TO FORMAL PROCEEDINGS IN ADMINISTRATIVE PRACTICE AND PROCEDURE) AND 6 PA CODE CHAPTER 3 (RELATING TO FAIR HEARINGS AND APPEALS). APPEALS MUST BE POSTMARKED WITHIN 30 DAYS FROM RECEIPT OF THE DEPARTMENT'S LETTER AND BE IN WRITING TO THE ATTENTION OF THE SECRETARY OF THE DEPARTMENT.**

~~(c) If an applicant's challenge to the criminal history record is deemed invalid, the applicant's rights for reconsideration by the facility are exhausted.~~

§ 15.136 Facility personnel rights of review and appeal. [Reserved]

~~(a) Facility personnel, may review, challenge and appeal the completeness or accuracy of criminal history record information report pursuant to the~~

~~procedures set forth in the Criminal History Record Information Act (18 Pa. C.S.A. Sections 9152-9183) and, if applicable, Federal regulations at 28 CFR Section 16.34.~~

~~(b) If an employee's criminal history record information report is, as a result of a challenge by the employee, changed so as to remove any basis for termination, the facility must reinstate the employee to either the employee's former position or an equivalent position.~~

~~(c) An employee's challenge to the criminal record information report is limited to the appeal rights set forth in the Criminal History Record Information Act (18 Pa. C.S. Sections 9152-9183).~~

§ 15.137 Provisional hiring.

~~(a) Administrators FACILITIES may employ applicants on a provisional basis for a single period, not to exceed 30 days for applicants applying for the Pennsylvania REQUESTING A STATE POLICE criminal history record information report, and A SINGLE PERIOD not to exceed 90 days for applicants applying for the REQUESTING A FBI FEDERAL criminal history record information report, if all of the following conditions are met:~~

~~(1) Applicants SHALL have applied for the information required under § 15.131 A CRIMINAL HISTORY REPORT and provided the administrator FACILITY with a copy of the completed request forms.~~

~~(2) The administrator FACILITY SHALL has HAVE no knowledge about THE applicants which THAT would disqualify them THE APPLICANT from employment pursuant to the Acts, subject to UNDER 18 Pa. C.S. § 4911 (relating to tampering with public record information).~~

~~(3) THE Applicants SHALL swear or affirm in writing that they are THE APPLICANT IS not disqualified from employment under the Act.~~

~~(4) If the information obtained from the criminal history record checks reveals that applicants are disqualified from employment in accordance with § 15.133, the applicant shall be dismissed immediately.~~

~~(5) (4) The provisionally employed applicant SHALL receives:~~

~~(i) AAn orientation which provides information on policies, procedures and laws which address standards of proper care and recognition and reporting of abuse or neglect, or both, of recipients.~~

~~(ii) (3) THE FACILITY SHALL RegularLY supervisoryE observation of the applicant carrying out the applicant's ASSIGNED duties. THE RESULTS OF THE OBSERVATIONS SHALL BE DOCUMENTED IN THE EMPLOYEE PERSONNEL FILE.~~

~~(6) (4) For a A home health care agency, SHALL SUPERVISE the supervision of a provisionally employed applicant shall include THROUGH random, direct observation/ AND evaluation of the applicant and care recipient by an employee who has been employed by the home~~

health agency for at least one year. THE RESULTS OF THE OBSERVATIONS SHALL BE DOCUMENTED IN THE EMPLOYEE PERSONNEL FILE.

(7)(5) For a A home health agency which has been in business for less than one year, supervision of a provisionally employed SHALL SUPERVISE THE applicant shall include THROUGH random, direct observation/ AND evaluation of the applicant and care recipient by an employee with prior employment experience of at least one year with one or more other home health care agencies. THE RESULTS OF THE OBSERVATIONS SHALL BE DOCUMENTED IN THE EMPLOYEE PERSONNEL FILE.

~~(B) IF THE INFORMATION OBTAINED FROM THE CRIMINAL HISTORY REPORT REVEALS THAT THE APPLICANT IS DISQUALIFIED FROM EMPLOYMENT IN ACCORDANCE WITH §15.33, THE APPLICANT SHALL BE DISMISSED IMMEDIATELY.~~

~~(b) (c) The administrator or designee shall on the 30th day of provisional employment for a Pennsylvania resident applicant or the 90th day for a non-resident applicant review the contents of the applicant's personnel file ON THE 30TH DAY OF PROVISIONAL EMPLOYMENT OF A PENNSYLVANIA RESIDENT APPLICANT OR THE 90TH DAY OF PROVISIONAL EMPLOYMENT OF A NON-RESIDENT APPLICANT to insure that the required copy of the State Police CRIMINAL HISTORY RECORD or FBI, THE LETTER OF DETERMINATION ISSUED BY THE DEPARTMENT, OR BOTH criminal background check results is physically present in the folder along with the correspondence from the State Police or the Department advising that the applicant's employment may be continued or must be terminated.~~

~~(c) (D) Except as provided in subsection (d)(E), if inspection of the file on day 30 or 90, as appropriate, reveals that the information noted in subsections (a) and (b) STATE POLICE CRIMINAL HISTORY RECORD, THE LETTER OF DETERMINATION ISSUED BY THE DEPARTMENT, OR BOTH has not been provided to the employer, the applicant's employment shall be immediately suspended or terminated.~~

~~(d) (E) If information regarding THE criminal history record reports, THE LETTER OF DETERMINATION ISSUED BY THE DEPARTMENT, OR BOTH, has not been provided as required due to the inability of the State Police or the FBI FEDERAL BUREAU OF INVESTIGATION to provide it within the mandated time frames THEM TIMELY, the period of provisional employment is SHALL BE extended until the facility receives the required reports from the State Police or FBI. DURING THE EXTENDED PROVISIONAL EMPLOYMENT PERIOD, THE SUPERVISION AND DOCUMENTATION REQUIREMENTS OF THIS SECTION SHALL BE CONTINUED.~~

§ 15.138 Violations

(a) Administrative -

(1) An administrator or a designee OR FACILITY OWNER-OPERATOR who intentionally or willfully fails to comply or obstructs compliance with §§ 15.131 through 15.137 commits a violation of this chapter and shall be subject to an administrative penalty under paragraph (3).

(2) A facility owner that intentionally or willfully fails to comply with or obstructs compliance with § 15.131 through 15.137 of this chapter commits a violation of this chapter and shall be subject to an administrative penalty under paragraph (3).

(3) VIOLATIONS AND PENALTIES SHALL BE DETERMINED BY ~~†~~The Commonwealth agency which THAT licenses the facility. has jurisdiction to determine violations of this chapter and THE COMMONWEALTH AGENCY may issue an order assessing a civil penalty of not more than \$2,500. An order under this paragraph is subject to 2 Pa. C.S. Ch. 5, Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

AN ORDER ISSUED PURSUANT TO THIS PARAGRAPH IS SUBJECT TO DUE PROCESS AS SET FORTH IN 2 PA.C.S.A. §§ 501-555 (RELATING TO PRACTICE AND PROCEDURE OF COMMONWEALTH AGENCIES) AND JUDICIAL REVIEW IN 2 PA.C.S.A. §§ 701-754 (RELATING TO JUDICIAL REVIEW).

(4) (3) REPRESENTATIVES OF THE DEPARTMENTS OF AGING, HEALTH AND WELFARE WHO SUSPECT VIOLATIONS OF THIS SECTION ~~To assist Commonwealth agencies carry out the responsibilities set forth in paragraph (3), representatives of these agencies who have knowledge of violations shall report them to the appropriate Commonwealth licensing agency~~ UNDER PROCEDURES DEVELOPED BY THE DEPARTMENT IN CONSULTATION WITH THE LICENSING AGENCY. THE REPORT SHALL BE MADE IN WRITING AND INCLUDE, AT A MINIMUM, THE FACILITY, THE ADMINISTRATOR, OWNER, OPERATOR OR DESIGNEE SUSPECTED OF COMMITTING THE VIOLATION AND A DESCRIPTION OF THE SUSPECTED VIOLATION.

(b) Criminal -

(1) An administrator or a designee OR FACILITY OWNER who intentionally or willfully fails to comply or obstructs compliance with SECTIONS 15.131 THROUGH 15.137 ~~this chapter~~ commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of \$2,500 or to imprisonment for not more than one year, or both.

(2) A facility owner that intentionally or willfully fails to comply with or obstructs compliance with this chapter commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of \$2,500 or to imprisonment for not more than one year, or both.

REPORTING SUSPECTED ABUSE

§ 15.141. General requirements.

(a) Administrators or employees who have reasonable cause to suspect that a client **RECIPIENT** is a victim of abuse shall:

(1) Immediately make an oral report to the agency.

(2) ~~Within 48 hours of making the oral report, m~~Make a written report to the agency **WITHIN 48 HOURS.**

(b) Employees making oral or written reports shall immediately notify the facility administrator **OR DESIGNEE** of these reports.

(c) Agencies shall notify facility administrators, or their designees, and State agencies with facility licensing responsibilities immediately when written reports of abuse are received.

(d) Employees required to report abuse may request facility administrators or their designees to make, or assist them **THE EMPLOYEES** to make, oral or written reports.

§ 15.142. Additional reporting requirements.

(a) **ADMINISTRATORS OR** ~~E~~Employees or administrators who have reasonable cause to suspect that a recipient is the victim of sexual abuse, serious physical injury or serious bodily injury, or that a recipient's death is suspicious, shall, in addition to the reporting requirements in Section 15.141(a):

(1) Immediately make an oral report to law enforcement officials. An employee shall immediately notify the **FACILITY** administrator or a designee following a report to law enforcement officials.

(2) Make an oral report to the Department during the current business day or, if the incident occurs after normal business hours, at the opening of the next business day.

(3) **MAKE A WRITTEN REPORT** ~~W~~Within 48 hours of making the oral report, ~~make a written report to law enforcement officials and the agency.~~

(b) Law enforcement officials will **SHALL** promptly notify facility administrators or their designees that reports have been made with them.

(c) **ADMINISTRATORS OR EMPLOYEES SHALL, IN ADDITION TO COMPLYING WITH THESE REQUIREMENTS, COMPLY WITH ANY REPORTING REQUIREMENTS OF THE COMMONWEALTH LICENSING AGENCY THAT LICENSES OR FUNDS THE FACILITY.**

CAMILLE "BUD" GEORGE, MEMBER
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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
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Mr. Robert C. Nyce
Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

January 19, 2000

RECEIVED
2000 JAN 19 AM 10:46
REGULATORY
REVIEW COMMISSION

Dear Mr. Nyce:

As a cosponsor of Act 169 of 1996 and Act 13 of 1997, I very much appreciated being invited to comment on the Department of Aging's proposed rulemaking regarding Protective Services for Older Adults, Regulation #1-17 (#2077), by January 28, 2000.

Overall, the Department of Aging has accomplished a most laudable proposed regulatory package. The only concerns I would have about certain proposed changes and additions to Chapter 15 of existing regulations are as follows:

1. In Section 15.127(b), the proposed rulemaking would change the minimum topics to be included in annual in-service training from mandatory to permissive.

I would recommend deleting this change since the three topics listed, including an update on laws and regulations relating to protective services, technical assistance for common problems and best practice presentations, are worthy of an annual review.

2. In added Section 15.141(a)(2), administrators or employees who have reasonable cause to suspect that a client is a victim of abuse shall within 48 hours of making the oral report make a written report to the agency. Corresponding subsection (c) requires agencies to notify facility administrators, or their designees, and State agencies with facility licensing responsibilities when written reports of abuse are received.

I would recommend changing the proposal to require a written report within 24 hours rather than 48 hours. In my opinion, this would be a reasonable requirement that would have a number of potential benefits for helping to protect clients. First, facility administrators would be more likely to take a report seriously and to undertake a more prompt investigation of the alleged abuse. Second, given that the appropriate State agency with facility licensing responsibilities would be made aware of a report in a more timely fashion, the agency could potentially undertake swift intervention when it deems necessary.

3. In added Section 15.142(a)(3), employees or administrators who have reasonable cause to suspect that a recipient is the victim of sexual abuse, serious physical injury or serious bodily injury, or that a recipient's death is suspicious shall make a written report to law enforcement officials and the agency within 48 hours of making the oral report.

I would recommend changing this proposed provision to requiring the written report within 24 hours rather than within 48 hours to ensure the opportunity for more swift agency action and law enforcement intervention where necessary.

Thank you in advance for your kind consideration of my comments regarding this regulatory package.

Sincerely,

A handwritten signature in black ink that reads "Camille George". The signature is written in a cursive, flowing style.

Camille George
STATE REPRESENTATIVE

CG/cp

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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

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MAJORITY CHAIRMAN
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MEMORANDUM

DATE: January 18, 2000

SUBJECT: Older Adult Protective Services Regulations
House Aging and Youth Committee Review

TO: House Members of the Aging and Youth Committee

FROM: The Honorable Jere W. Schuler, Majority Chairman
The Honorable Frank J. Pistella, Minority Chairman

RECEIVED
2000 JAN 18 PM 3:15
REVIEW COMMISSION

In November of 1999, the Department of Aging filed with our committee proposed changes to the regulations pursuant to the Older Adult Protective Services Act. Since that filing, the committee staff met and identified issues that we believed needed further discussion with the department. On January 11th, committee staff met with officials from the department and an agreement was reached on substantive changes to those proposed regulations.

In order to keep each of you informed on these proposed changes to the regulations, the executive directors of the committee were asked to jointly prepare a memo summarizing the points that were discussed with the department as well as the department's agreed to changes. We have attached that memorandum for your perusal.

If you have any questions concerning these proposed regulations and the agreement that was reached with the department, please do not hesitate to contact either one of us or our respective executive director.

attachment

cc: Representative John Perzel, Republican Leader
Representative Donald Snyder, Republican Whip
Representative H. William DeWeese, Democratic Leadership
Representative Michael Veon, Democratic Whip
Richard Browdie, Secretary, Department of Aging
Bob Klugiewicz, Legislative Liaison, Department of Aging
✓ John R. McGinley, Jr., IRRRC Chairman
Alvin C. Bush, IRRRC Vice Chairman
Arthur Coccodrilli, IRRRC Commissioner
Robert J. Harbison, III, IRRRC Commissioner
John F. Mizner, IRRRC Commissioner



House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

MEMORANDUM

DATE: January 18, 2000

SUBJECT: Older Adult Protective Services Regulations
House Aging and Youth Committee Review

TO: The Honorable Jere W. Schuler, Majority Chairman
The Honorable Frank J. Pistella, Minority Chairman

FROM: Sharon E. Schwartz, Majority Executive Director
Lawrence M. Clark, Minority Executive Director

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2000 JAN 18 PM 3:15
LEGISLATIVE EVALUATORY
COMMISSION

As you are aware, the committee staffs met several weeks ago concerning the proposed regulations to the Older Adult Protective Services statute and identified sixteen issues that we believed needed further clarification and explanation concerning the Department of Aging's intent. On January 11th, staff then met with officials from the department concerning our list of issues and the proposed regulations. This meeting was extremely productive and we were able to gain a better understanding of the rationale behind many of the proposed changes. In addition, the department has agreed to make nine substantive revisions to the regulation proposal. We have outlined below the list of sections and changes staff discussed with the department. The mutually agreed-to changes based on staff concerns are in italics. With incorporation of these agreed-to changes, we recommend that the committee act favorably upon the proposed regulation changes.

- 1) Section 15.2 - Staff expressed concern regarding the references to "assisted living" in the definition of facility. We believe that it is premature to reference a new category of care, prior to necessary legislative action that would provide for a statutory basis for "assisted living".

The department representatives agreed to remove the term "assisted living" from the proposed regulations.

- 2) Staff expressed concern with the lack of a consistent term for individuals who would be potential protective services consumers - the proposal includes several terms, ie. "older adult", "client", "older person" throughout the document

The department representatives agreed to use the term "older adult" consistently throughout the regulation - particularly since the enabling statute is the Older Adult Protective Services Act. The terms "client" and "older person" will be removed, where appropriate. In addition, the term "client assessment" will be renamed "assessment".

- 3) Section 15.95(c)(2) - Staff expressed concern regarding the circumstances under which a reassessment for protective services clients would occur - the proposal indicates that reassessment would be done before a case is terminated, transferred or it is the agency's judgment that a reassessment is appropriate. We requested that reassessment should also occur in the event of a change in the individual's condition.

The department representatives agreed to include language to reflect that a change in the individual's condition would also trigger a reassessment.

- 4) Section 15.105(1) - Staff expressed concern regarding an inconsistency between language in current law (section 306(a)) and language proposed in regulation regarding disclosure of information in a protective services case record. Current law indicates that "information shall not be disclosed to anyone outside the agency other than to a court of competent jurisdiction or pursuant to a court order". The proposed regulation removes the word "or" thereby removing the option of disclosing information either to a court of competent jurisdiction or under a court order. The proposed regulation would state that "information may be disclosed to a court of competent jurisdiction under a court order".

The department representatives agreed that the language must be consistent with the statute and agreed, therefore, to reinstate the word "or".

- 5) Section 15.132(a)(2) - Staff expressed concern regarding language that would allow facility administrators and operators a period of 90 days from the date of employment within which to comply with the criminal history record information requirements. We indicated that this language is not consistent with the intent of the statute.

The department representatives agreed that the administrators and operators who are residents should comply with the criminal history record information requirements within 30 days from the date of employment - and, non-resident administrators and operators should comply within 90 days from the date of employment. They will make the revisions, accordingly.

- 6) Section 15.132(6)(b) - Staff expressed concern regarding language that would impose a burden on employees for determining whether they are required to obtain a criminal history record information report as required - the language would further exempt the facility from liability for failure to inform the employee of his obligations. We indicated that this language goes beyond the intent of the statute.

The department representatives agreed that this language is not authorized by statute and, therefore, agreed to strike the language.

- 7) Section 15.133(g, h, i) - Staff expressed concern regarding information that would be required to be maintained by facilities in employment records. We requested that the employment records include both the completed request for the State Police/FBI criminal history record information and the criminal history record information subsequently supplied by the State Police/FBI. In addition, we requested that all information be maintained onsite at any facility where an individual is an employee, even in cases where the facility uses employees supplied, referred or arranged by other facilities.

The department representatives felt that the recommendations were sensible and agreed to make appropriate technical revisions in the proposal to address those concerns in the manner requested by staff.

- 8) Section 15.136 - Staff expressed concern with the inconsistencies between the titles of Sections 15.135 and 15.136 - one section refers to the right of appeal and the other does not.

The department representatives agreed that the term "and appeal" should not be included in the Section 15.136 title and will remove that language, accordingly.

- 9) Section 15.137(d) - Staff expressed concern with allowing the provisional employment to be extended for an unspecified period of time due to State Police or FBI administrative delays. We requested that the language be strengthened regarding mandatory supervision of staff during a period of provisional employment for the protection of the care recipient.

The department representatives agreed that emphasis should be given to the necessity of supervision in these instances and will strengthen the language, accordingly.

In addition to the substantive language changes that were agreed-to, staff expressed concern regarding Section 15.21(b). We believe that the proposed language has the potential of creating confusion with regard to its applicability in a facility setting, given that the term "caretaker" is defined as "an individual or institution". We have requested that the department issue an interpretive bulletin to Area Agencies on Aging to provide clear guidance on its intent for implementation of this provision.

The department representatives agreed to provide guidance to Area Agencies on Aging on implementation of Section 15.21(b) through issuance of an interpretive bulletin.

Finally, staff expressed concern regarding the department's proposal to remove language in Section 15.13 that currently prohibits designating a protective services caseworker as an agency long-term care ombudsman. We are concerned that removal of this prohibition may result in a potential conflict-of-interest situation if one individual would be permitted to fulfill both functions. Given the significant separate roles that the protective services unit and the ombudsman each perform, we believe that it is in the best interest of long-term care consumers and other vulnerable older adults to maintain these functions with separate, distinct individuals.

It is our understanding that the department has not made a final decision on this issue.

We would be happy to meet with you to discuss this material in further detail. Please advise.

SES/LMC/db