

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 1378
SENATE BILL 503

AN ACT TO BE KNOWN AS THE PROTECTION OF THE ABUSED OR NEGLECTED
ELDERLY ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 108 of the General Statutes is hereby amended by adding at the end thereof a new Article 6 to read as follows:

"Article 6.

"Protection of the Abused or Neglected Elderly Act.

"§ 108-91. **Short title.** — This Article may be cited as the Protection of the Abused or Neglected Elderly Act.

"§ 108-92. **Legislative intent and purpose.** — Determined to protect the increasing number of elderly infirm persons in North Carolina who are abused or neglected, the General Assembly enacts this Article to provide protective services for such persons.

"§ 108-93. **Definitions.** — (a) The words 'elderly person' shall mean any person over the age of 65 who resides in the State of North Carolina.

(b) An 'elderly person' shall be deemed to be 'in need of protective services' if that person is unable to perform or obtain for himself services which are necessary to maintain his mental and physical health.

(c) The words 'services which are necessary to maintain mental and physical health' shall include, but shall not be limited to the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment, and transportation necessary to secure any of the above stated needs; provided that the words 'services which are necessary to maintain mental and physical health' shall not include taking the person into physical custody without his consent except as provided for in G.S. 108-97(a) and in Chapter 122 of the General Statutes.

(d) The words 'protective services' shall mean services provided by the State or other government or private organizations or individuals which are necessary to prevent abuse or neglect. Abuse shall include the willful infliction of physical pain, injury or mental anguish or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health. Neglect refers to an elderly person who is either living alone and not able to provide for himself the services which are necessary to maintain his mental and physical health or is not receiving the said services from his caretaker.

(e) The word 'director' shall mean the director of the Department of Social Services of the county in which the person resides or is found or his delegated representative.

(f) The word 'caretaker' shall mean an individual who has the responsibility for the care of the elderly person as a result of family relationship or who has assumed the responsibility for the care of the elderly person voluntarily or by contract.

(g) The word 'indigent' shall mean indigent as defined in G.S. 7A-450.

"§ 108-94. **Duty to report.** — (a) Any person having reasonable cause to believe that an elderly person is in need of protective services shall report such information to the director.

(b) Anyone who makes a report pursuant to this statute or who testifies in any judicial proceeding arising from the report shall be immune from any civil or criminal liability on account of such report or testimony, unless such person acted in bad faith or with a malicious purpose.

"§ 108-95. Duty of director upon receiving report. — Any director receiving a report that an elderly person is in need of protective services shall make a prompt and thorough evaluation to determine whether the elderly person is in need of protective services and what services are needed. The evaluation shall include a visit to the person and consultation with others having knowledge of the facts of the particular case. After completing the evaluation the director shall make a written report of the case indicating whether he believes protective services are needed and shall notify the individual making the report of his determination as to whether the elderly person needs protective services.

"§ 108-96. Provision of protective services with the consent of the person. — (a) If the director determines that an elderly person is in need of protective services, he shall immediately provide or arrange for the provision of protective services, provided that the elderly person consents.

(b) When a caretaker of an elderly person who consents to the receipt of protective services refuses to allow the provision of such services to the elderly person, the director may petition the district court for an order enjoining the caretaker from interfering with the provision of protective services to the elderly person. The petition must allege specific facts sufficient to show that the elderly person is in need of protective services and consents to the receipt of protective services and that the caretaker refuses to allow the provision of such services. If the judge finds that the elderly person is in need of protective services and that the caretaker refuses to allow the provision of such services, he may issue an order enjoining the caretaker from interfering with the provision of protective services to the elderly person.

(c) If an elderly person does not consent to the receipt of protective services, or if he withdraws his consent, the services shall not be provided, unless the director reasonably determines that the elderly person lacks capacity to consent, in which case he may seek court authorization to provide protective services pursuant to G.S. 108-97.

"§ 108.97. Provision of protective services to elderly persons who do not have the capacity to consent. — (a) If the director reasonably determines that an elderly person is being abused or neglected and lacks capacity to consent to protective services, then the director may petition the district court for an order authorizing the provision of protective services. The petition must allege specific facts sufficient to show that the elderly person is in need of protective services and lacks capacity to consent to them.

(b) The court shall set the case for hearing within 14 days after the filing of the petition if sufficiently specific facts are alleged. The elderly person must receive at least five days' notice of the hearing. He has the right to be present and represented by counsel at the hearing. If the person is indigent or, in the determination of the judge, lacks the capacity to waive the right to counsel, then the court shall appoint counsel. If the person is indigent, the cost of representation shall be borne by the State. If the person is not indigent, the cost of representation by counsel shall be added to the court cost.

If, at the hearing, the judge finds that the elderly person is in need of protective services and lacks capacity to consent to protective services, he may issue an order authorizing the provision of protective services. This order may include the designation of an individual or organization to be responsible for the personal welfare of the person and for consenting to protective services in his behalf. No elderly person may be committed to a mental health facility under this act.

(c) Emergency orders prior to the hearing. If, on the basis of the facts alleged in the director's petition, the judge makes a preliminary finding that the elderly person lacks capacity to consent and will be in substantial danger of death or may suffer irreparable harm if

protective services are not provided immediately, then the judge may issue an emergency order authorizing the immediate provision of protective services; but nevertheless the court shall proceed in accordance with subsection (b) of this section, and the emergency order shall have no force or effect after the required hearing.

"§ 108-98. **Motion in the cause.** — Notwithstanding any finding by the court of lack of capacity of the elderly person pursuant to the procedures set forth in G.S. 108-97, the elderly person or the individual or organization designated to be responsible for the personal welfare of the elderly person shall have the right to bring a motion in the cause for review of an order issued pursuant to the procedures set forth in G.S. 108-97.

"§ 108-99. **Utilization of available services.** — In performing the duties set forth in this Article, the director may utilize the staff of the county department of social services, the county health departments, or any other public or private agencies, or individuals who may be available.

"§ 108-100. **Privilege for confidential communications.** — Notwithstanding any privilege for confidential communications between husband and wife, the judge at the hearing may compel testimony of either or both if he finds that such testimony is necessary to a proper administration of justice.

"§ 108-101. **Payment for protective services.** — At the time the director, in accordance with the provisions of G.S. 108-95, makes an evaluation of the case reported, then it shall be determined, according to regulations set by the Social Services Commission, whether the individual is financially capable of paying for the protective services. If he is, he shall make reimbursement for the costs of providing the needed protective services. If it is determined that he is not financially capable of paying for such needed services, they shall be provided at no cost to the recipient of the services."

Sec. 2. G.S. 7A-451 is hereby amended to delete the word "and" at the end of subsection (7) and to insert after subsection (8) the following:

"and (9) A proceeding for the provision of protective services according to Chapter 108, Article 6, of the General Statutes."

Sec. 3. G.S. 7A-246 is hereby amended to insert after the words "special proceedings" the words "except proceedings under the Protection of the Abused or Neglected Elderly Act (Chapter 108, Article 6, of the General Statutes)."

Sec. 4. This act shall become effective on July 1, 1974.

In the General Assembly read three times and ratified, this the 13th day of April, 1974.