

2018 -- S 2421 SUBSTITUTE A

LC004346/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO CRIMINAL OFFENSES -- ABUSE AND EXPLOITATION OF ELDERS--
ABUSE AND ISOLATION OF ELDERS OR DEPENDENT ADULTS -- THE PETER FALK
CRIMINAL ISOLATION OF ELDERS ACT

Introduced By: Senators Lombardi, Lynch Prata, Archambault, Algieri, and Ciccone

Date Introduced: February 15, 2018

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 11-68-1 of the General Laws in Chapter 11-68 entitled
2 "Exploitation of Elders" is hereby amended to read as follows:

3 **11-68-1. Definitions.**

4 As used in this chapter:

5 (1) "Business relationship" means a relationship between two (2) or more individuals or
6 entities where there exists an oral or written contract or agreement for goods or services.

7 (2) "Caregiver" means a person who has been entrusted with or has assumed
8 responsibility for the care or the property of an elder person. Caregiver includes, but is not limited
9 to, relatives, court-appointed or voluntary guardians, adult household members, neighbors, health
10 care providers, and employees and volunteers of elder care facilities.

11 (3) "Deception" means misrepresenting or concealing a material fact relating to:

12 (i) Services rendered, disposition of property, or use of property, when such services or
13 property are intended to benefit an elder person; or

14 (ii) Terms of a contract or agreement entered into with an elder person; or

15 (iii) An existing or preexisting condition of any property involved in a contract or
16 agreement entered into with an elder person; or

17 (iv) Using any misrepresentation, false pretense, or false promise in order to induce,
18 encourage or solicit an elder person to enter into a contract or agreement.

1 (4) "Elder person" means a person ~~sixty-five (65)~~ sixty (60) years of age or older.

2 (5) "Intimidation" means the communication by word or act to an elder person that the
3 elder person will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical
4 services, money, or financial support or will suffer physical violence.

5 (6) "Lacks capacity to consent" means an impairment by reason of mental illness,
6 developmental disability, organic brain disorder, physical illness or disability, short-term memory
7 loss, or other cause, that causes an elder person to lack sufficient understanding or capacity to
8 make or communicate reasonable decisions concerning the elder person's person or property.

9 (7) "Position of trust and confidence" with respect to an elder person means the position
10 of a person who:

- 11 (i) Is a spouse, adult child, or other relative by blood or marriage of the elder person;
- 12 (ii) Is a joint tenant or tenant in common with the elder person;
- 13 (iii) Has a legal or fiduciary relationship with the elder person including, but not limited
14 to, a court-appointed or voluntary guardian, trustee, attorney, or conservator;
- 15 (iv) Is the caregiver of the elder person; or
- 16 (v) Is any other person who has been entrusted with or has assumed responsibility for the
17 use or management of the elder person's funds, assets, or property.

18 SECTION 2. Title 11 of the General Laws entitled "CRIMINAL OFFENSES" is hereby
19 amended by adding thereto the following chapter:

20 CHAPTER 68.1

21 ABUSE AND ISOLATION OF ELDERS OR DEPENDENT ADULTS – THE PETER FALK

22 CRIMINAL ISOLATION OF ELDERS ACT

23 **11-68.1-1. Short title.**

24 This chapter shall be known and may be cited as the "Peter Falk Criminal Isolation of
25 Elders Act."

26 **11-68.1-2. Definitions.**

27 As used in this chapter:

28 (1) "Abuse" means physical abuse, sexual abuse, and/or emotional abuse of an elder
29 person or dependent adult:

30 (i) "Emotional abuse" means a pattern of willful infliction of mental or emotional harm
31 upon an elder or dependent adult by threat, intimidation, isolation or other abusive conduct.

32 (ii) "Physical abuse" means the willful infliction of physical pain or injury including, but
33 not limited to, slapping, bruising or restraining upon an elder person or dependent adult.

34 (iii) "Sexual abuse" means the infliction of non-consensual sexual contact of any kind

1 upon an elder person. Sexual abuse includes, but is not limited to, sexual assault, rape, sexual
2 misuse, or exploitation of an elder person or dependent adult, as well as threats of sexual abuse
3 where the perpetrator has the intent and the capacity to carry out the threatened abuse.

4 (2) "Caregiver" means a person who has been entrusted with or has assumed
5 responsibility for the care, custody, or control of, whether for pecuniary gain, by contract, or as a
6 result of the ties of friendship or who stands in a position of trust with, an elder person or
7 dependent adult. Caregiver includes, but is not limited to, caretakers, relatives, court-appointed
8 guardians, adult household members, conservators, attorney-in-fact, neighbors, health care
9 providers, and employees and volunteers of elder care facilities.

10 (3) "Dependent adult" means any individual eighteen (18) years of age, who has a
11 physical or mental impairment that restricts their ability to carry out normal activities or to protect
12 their rights. The term includes, but is not limited to, persons who have physical or developmental
13 disabilities or whose physical or mental disabilities have diminished because of age.

14 (4) "Elder person" means a person sixty (60) years of age or older.

15 (5) "Isolate" means the restriction of personal rights retained by the elder or dependent
16 adult, including, but not limited to, the right to receive visitors, telephone calls, and personal mail
17 unless the restriction of personal rights is authorized by court order.

18 (6) "Neglect" means the willful failure by a caregiver or other person with a duty of care
19 to provide goods or services necessary to avoid physical harm, mental harm, or mental illness to
20 an elder person, including, but not limited to, "abandonment" (withdrawal of necessary
21 assistance) and denial of food or health related services.

22 (7) "Position of trust" means a person who:

23 (i) Is a spouse, adult child, or other relative by blood or marriage of the elder person or
24 dependent adult;

25 (ii) Has a legal or fiduciary relationship with the elder person including, but not limited
26 to, a court-appointed or voluntary guardian, trustee, attorney, or conservator;

27 (iii) Is the caregiver of the elder person; or

28 (iv) Is any other person who has been entrusted with or has assumed responsibility for the
29 care, custody, or control of the elder person or dependent adult.

30 (8) "Willful" means intentional, conscious and directed toward achieving a purpose.

31 **11-68.1-3. Abuse or isolation of an elder person or dependent adult prohibited.**

32 Any person, including any caretaker defined in this chapter, is guilty of isolation of an
33 elder person or dependent adult if the person willfully isolates an elder person or dependent adult.

34 **11-68.1-4. Penalties for violations.**

1 (a) Any person convicted of abuse or isolation of an elder or dependent adult shall be
2 guilty of a felony and be imprisoned not exceeding three (3) years or subject to a fine of three
3 thousand dollars (\$3,000) or both.

4 (b) In addition to any sentence imposed pursuant to subsection (a) of this section any
5 person convicted of violating this section may be required to undergo appropriate counseling as a
6 condition of any sentence imposed and provided, further, that the costs of the counseling so
7 imposed shall be paid by the defendant when possible.

8 SECTION 3. Section 33-15-18.1 of the General Laws in Chapter 33-15 entitled "Limited
9 Guardianship and Guardianship of Adults" is hereby amended to read as follows:

10 **33-15-18.1. Rights of persons subject to limited guardianship, guardianship and**
11 **conservatorship.**

12 (a) Unless specifically authorized by court order, a limited guardian, guardian, or
13 conservator shall not restrict a ward's right of communication, visitation, or interaction with other
14 persons, including the right to receive visitors, telephone calls, or personal mail. If a ward is
15 unable to express consent to communication, visitation, or interaction with a person due to a
16 physical or mental condition, then consent of the ward may be presumed based on the ward's
17 prior relationship history with the person.

18 (b) A limited guardian, guardian, or conservator may, for good cause shown, move the
19 court to have restrictions placed on a person's ability to communicate, visit, or interact with a
20 ward in accordance with subsection (c) of this section. Good cause means and includes:

21 (1) Whether any protective orders have been issued to protect the ward from the person
22 seeking access to the ward;

23 (2) Whether abuse, neglect, or financial exploitation of the ward by the person seeking
24 access to the ward has occurred or is likely to occur;

25 (3) Documented wishes of the ward to reject communication, visitation, or interaction
26 with specific persons; or

27 (4) Any other factors deemed relevant by the court.

28 (c) (1) A court may order restrictions placed on the communications, visitations, or
29 interactions a person may have with a ward upon a showing of good cause by the limited
30 guardian, guardian, or conservator.

31 (2) In determining whether to issue an order in accordance with subsection (c)(1) of this
32 section, the following factors shall be considered by the court:

33 (i) Whether any protective orders have been issued to protect the ward from the person
34 seeking access to the ward;

1 (ii) Whether the person has been charged with abuse, neglect, or financial exploitation of
2 the ward;

3 (iii) Whether the ward expresses a desire to communicate, visit, or interact with the
4 person;

5 (iv) If the ward is unable to communicate, whether a properly executed living will,
6 durable power of attorney, or advance directive contains a preference by the ward with regard to
7 the person's communication, visitation, or interaction with the ward; and

8 (v) Any other factors deemed relevant by the court.

9 (3) Prior to issuing an order pursuant to subsection (c) of this section, the court shall
10 consider the following restrictions in the order listed:

11 (i) Placing reasonable time, manner, or place restrictions on communication, visitation, or
12 interaction between the ward and another person based on the history between the ward and the
13 person or the ward's wishes, or both;

14 (ii) Requiring that communication, visitation, or interaction between the ward and
15 another person be supervised; or

16 (iii) Denying communication, visitation, or interaction between the ward and another
17 person, provided, that, unless the court finds that the person poses a threat to the ward, supervised
18 communication, visitation, or interaction under subsection (c)(3)(ii) of this section shall be
19 ordered prior to the denial of any communication, visitation, or interaction.

20 (d) (1) If any interested person, including the ward, reasonably believes that subsection
21 (a) of this section or an order issued pursuant to subsection (c)(1) of this section has been
22 violated, then such person may move the court to:

23 (i) Require the limited guardian, guardian, or conservator to grant a person access to the
24 ward;

25 (ii) Restrict, or further restrict, a person's access to the ward;

26 (iii) Modify the limited guardian, guardian, or conservator's duties; or

27 (iv) Discharge and replace the limited guardian, guardian, or conservator pursuant to §
28 33-15-18.

29 (2) Notwithstanding actions available to the court pursuant to subsection (d)(1) of this
30 section, a limited guardian, guardian, or conservator who is found to be knowingly isolating a
31 ward and who has violated subsection (a) of this section or an order issued pursuant to subsection
32 (c) of this section shall be subject to discharge and replacement pursuant to § 33-15-18.

33 (e) (1) Except as provided in subsection (e)(2) of this section, the court shall schedule a
34 hearing on a motion filed pursuant to subsection (b) or (d) of this section no later than thirty (30)

1 days after the date the motion is filed. The court may, in its discretion, order mediation to be
2 conducted between the parties and the ward prior to the hearing. If mediation results in agreement
3 of the parties and the ward with regard to communication, visitation, or interaction with the ward,
4 the agreement shall be approved and memorialized in an order by the court.

5 (2) (i) If the motion states that the ward's health is in significant decline or that the ward's
6 death may be imminent, the court shall conduct an emergency hearing as soon as practicable, but
7 no later than ten (10) days after the motion is filed.

8 (ii) When a scheduling order is issued for a motion filed pursuant to subsection (e)(2)(i)
9 of this section, the court shall also order that supervised communication, visitation, or interaction
10 with the ward be granted during the period prior to the hearing.

11 (3) Notice of the hearing, a copy of the motion, and a copy of any order issued pursuant
12 to subsection (e)(2)(ii) of this section, if applicable, shall be personally served upon the ward and
13 any person against whom the motion is filed, and nothing in this section shall affect the ward's
14 right to appear and be heard in the proceedings.

15 (f) (1) The court may award the prevailing party in any action brought under this section
16 court costs and reasonable attorneys' fees; provided, however, that an award of court costs or
17 attorneys' fees shall not be paid out of the ward's estate.

18 (2) The court, upon motion or upon its own initiative, shall impose upon a limited
19 guardian, guardian, or conservator who is found to be knowingly isolating a ward and who has
20 violated subsection (a) of this section or an order issued pursuant to subsection (c) of this section
21 an appropriate sanction, including an order to pay court costs and reasonable attorneys' fees of the
22 other party or parties; provided, however, that no sanction shall be paid out of the ward's estate.

23 (g) A limited guardian, guardian, or conservator shall promptly notify a ward's closest
24 relatives and any person designated by the ward to be notified, along with the appropriate contact
25 information and upon the limited guardian, guardian, or conservator's knowledge of such event
26 and information, in the event:

27 (1) The ward's residence has changed;

28 (2) The ward is staying at a location other than the ward's residence for more than seven
29 (7) consecutive days;

30 (3) The ward is admitted to or discharged from a nursing home or assisted-care living
31 facility as defined in §§ 23-17-2 and 23-17.4-2;

32 (4) The ward is admitted to a medical facility for:

33 (i) Emergency care in response to a life-threatening injury or medical condition; or

34 (ii) Acute care; or

1 (iii) The ward dies, provided, that notification of the ward's death shall be made in person
2 or by telephone.

3 (h) (1) A limited guardian, guardian, or conservator is not required to provide notice in
4 accordance with subsection (g) of this section if:

5 (i) A person who is entitled to notice under subsection (g) of this section informs the
6 limited guardian, guardian, or conservator, in writing, that the person does not wish to receive
7 such notice; or

8 (ii) The ward or a court order has expressly prohibited the limited guardian, guardian, or
9 conservator from providing notice to the person.

10 (2) A limited guardian, guardian, or conservator shall not provide contact information in
11 accordance with subsection (g) of this section if an order of protection or restraining order has
12 been issued against the person on behalf of the ward.

13 (i)(1) As used in this section, the term, "close relative" means:

14 (i) The protected person's spouse;

15 (ii) An adult child of the protected person;

16 (iii) A parent of the protected person; or

17 (iv) An adult nearest in kinship to the protected person.

18 (2) The closest relative shall not be the person who is a guardian of the protected person.

19 (3) If two (2) persons qualify as the closest relative, the notice required pursuant to this
20 section shall be provided to both person. If more than two (2) persons qualify as the closest
21 relative, the notice shall be provided to the two (2) oldest persons from among those persons who
22 qualify.

23 (j) A court may, prior to considering any action available pursuant to this section, require
24 the parties subject to the prospective court order to undergo a mediation process approval by the
25 court. Mediation recommended pursuant to this section shall be provided by the department of
26 elderly affairs and the department is authorized and directed to promulgate rules and regulations
27 necessary to implement this section.

28 SECTION 4. Section 42-66-4.1 of the General Laws in Chapter 42-66 entitled "Elderly
29 Affairs Department" is hereby amended to read as follows:

30 **42-66-4.1. Definitions.**

31 As used in this chapter:

32 (1) "Abuse" means physical abuse, sexual abuse, and/or emotional abuse of an elderly
33 person by a caregiver as defined in subsection (5).

34 (a) "Physical abuse" means the willful infliction of physical pain or injury (e.g. slapping,

1 bruising or restraining) upon an elderly person.

2 (b) "Sexual abuse" means the infliction of non-consensual sexual contact of any kind
3 upon an elderly person. Sexual abuse includes, but is not limited to, sexual assault, rape, sexual
4 misuse or exploitation of an elder, as well as threats of sexual abuse where the perpetrator has the
5 intent and the capacity to carry out the threatened abuse.

6 (c) "Emotional abuse" means a pattern of willful infliction of mental or emotional harm
7 upon an elder by threat, intimidation, isolation or other abusive conduct.

8 (2) "Exploitation" means the fraudulent or otherwise illegal, unauthorized or improper act
9 or process of an individual, including, but not limited to, a caregiver or fiduciary, that uses the
10 resources of an elder for monetary or personal benefit, profit, gain, or that results in depriving an
11 elder of rightful access to, or use of, benefits, resources, belongings, or assets by use of undue
12 influence, harassment, duress, deception, false representation or false pretenses.

13 (3) "Neglect" means the willful failure by a caregiver or other person with a duty of care
14 to provide goods or services necessary to avoid physical harm, mental harm or mental illness to
15 an elderly person, including, but not limited to, "abandonment" (withdrawal of necessary
16 assistance) and denial of food or health related services.

17 (4) "Willful" means intentional, conscious and directed toward achieving a purpose.

18 (5) "Caregiver" means a person who has assumed the responsibility for the care of the
19 elderly person voluntarily, by contract or by order of a court of competent jurisdiction, or who is
20 otherwise legally responsible for the care of the elderly person. Caregiver includes, but is not
21 limited to, caretakers, relatives, court-appointed guardians, adult household members, neighbors,
22 health care providers, and employees and volunteers of elder care facilities.

23 (6) "Self-neglect" means a pattern of behavior in an elderly person that directly,
24 imminently and significantly threatens his/her own health and/or, safety. Self-neglect includes,
25 but is not limited to, an inability or an incapacity to provide self with food, water, shelter, or
26 safety to the point of establishing imminent risk of any of the harm(s) described in the
27 immediately preceding sentence.

28 (7) "Protective services" means services and/or action intended to prevent and/or alleviate
29 the abuse, neglect, exploitation or self-neglect of elderly persons. Protective services may include
30 supervision, counseling, and assistance in securing health and supportive services, safe living
31 accommodations and legal intervention.

32 (8) "Elderly person" or "elder" means any person sixty (60) years of age or older.

1 SECTION 5. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO CRIMINAL OFFENSES -- ABUSE AND EXPLOITATION OF ELDERS--
ABUSE AND ISOLATION OF ELDERS OR DEPENDENT ADULTS -- THE PETER FALK
CRIMINAL ISOLATION OF ELDERS ACT

- 1 This act would criminalize isolation of an elder or dependent adult and would provide
- 2 that certain notification requirements be fulfilled on behalf of elder persons or dependent adults.
- 3 This act would take effect upon passage.

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