

How Pennsylvania Laws Apply to Elder Sexual Abuse



PowerPoint Presentation

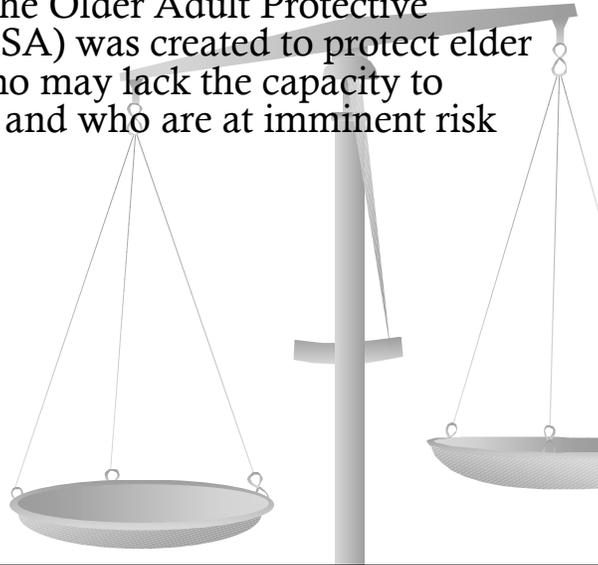
Elder Abuse Reporting Laws



Older Adult Protective Services Act

Act 79 of 1987 or the Older Adult Protective Services Act (OAPSA) was created to protect elder Pennsylvanians who may lack the capacity to protect themselves and who are at imminent risk of:

- abandonment
- abuse
- exploitation
- neglect



Talking Points:

- The act gave the Pennsylvania Department of Aging and the Area Agencies on Aging (AAA) the legal base to provide protective services.
- It assigned the AAAs to provide protective services as deemed necessary **through investigation** to protect PA elders.

Voluntary Reporting under Act 79

- Any person who believes that an older adult is being sexually abused/assaulted may file a report 7 days a week, 24 hours a day with any Area Agency on Aging (AAA) or call the statewide Elder Abuse Hotline

1-800-490-8505

- Abuse/assault reports can be made on behalf of an older adult regardless of where the person resides

Talking Points:

- This is the voluntary reporting policy established in 1987 with the Older Adult Protective Services Act.
- AAAs are mandated to protect seniors in any living scenario: in the community or in an institutional setting.
- The Elder Abuse Hotline is 800-490-8505. The hotline will direct callers to the local AAA to make a confidential report of abuse or neglect.
- This is only the case in Pennsylvania—each state's elder laws differ.

Mandatory Reporting under Act 13

- **Elder care workers are mandated reporters— meaning they must file an oral and written report to the AAA within 24 hours.**
- **In the case of sexual abuse/assault, serious injury, and/or suspicious death, reporters are also required to make an immediate oral report to local law enforcement and to the Pennsylvania Department of Aging within 24 hours.**
- **Within 48 hours of making the oral report, the employee or administrator will follow-up with a written report to local law enforcement officials.**

Talking Points:

- Act 13, an amendment to the Older Adult Protective Services Act passed in 1997, made elder care workers mandated reporters.
- Prior to this amendment, all reporting of abuse was voluntary.
- The amendment also redefined abuse and other terms to increase enforcement of the act.
- Failure to report can result in administrative or criminal penalties such as fines and license penalties.

Elder care workers are defined as employees and administrators of:

- nursing homes
- personal care homes
- domiciliary care homes
- adult day care centers/living centers
- home health care services

Protections for Reporters

- Reporters may remain anonymous
- Reporters have legal protection from retaliation, discrimination and civil or criminal prosecution



Talking Points:

- Protections are for voluntary and mandatory reporters.
- Reporters can not be taken to court and/or intimidated or fired by their employer for reporting to an AAA.
 - ... **UNLESS** the reporter acted in bad faith or with malicious purpose.
 - Bad faith is an act based on dishonest belief or purpose.
 - Malicious purpose is an act done without just cause or excuse.

Refresher of reporting (voluntary or mandatory) procedure to AAAs:

•Receive Report

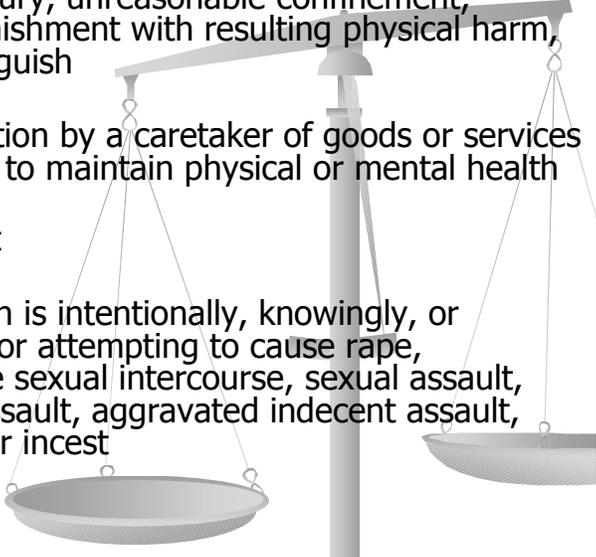
- *Classification of case as emergency, priority, non-priority*

Emergency cases must be investigated immediately (elder sexual abuse is considered an emergency case)

•Investigation of Reports by AAA

•Provision of Services by AAA

Act 13 Definition of Abuse

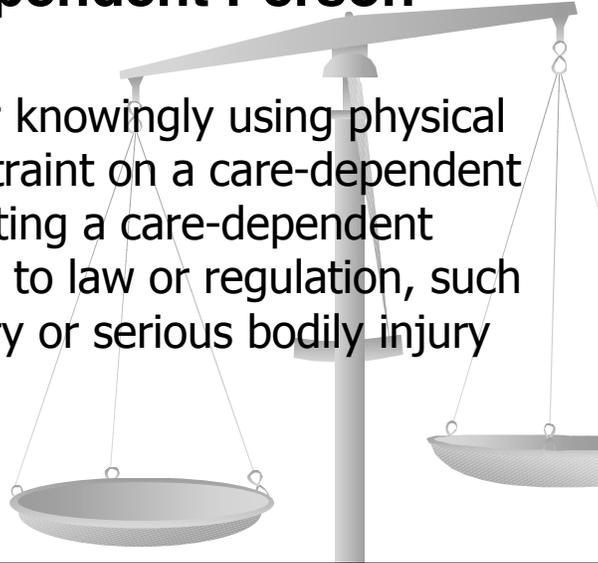
- The infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain, or mental anguish
 - The willful deprivation by a caretaker of goods or services that are necessary to maintain physical or mental health
 - Sexual harassment
 - Sexual abuse which is intentionally, knowingly, or recklessly causing or attempting to cause rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault, or incest
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Talking Points:

- Before Act 13, only the legal definitions of sexual harassment, rape and assault were covered under older protective services.
- The current definition covers nearly all illegal sexual acts.

Act 28 Neglect of a Care-Dependent Person

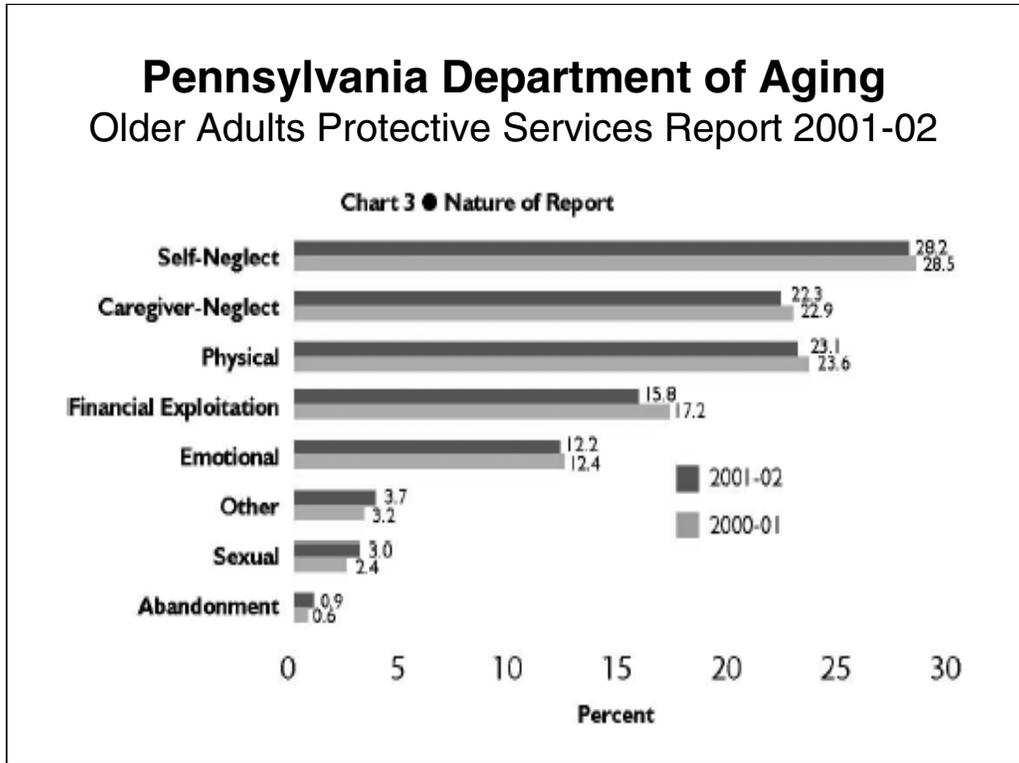
“intentionally or knowingly using physical or chemical restraint on a care-dependent person, or isolating a care-dependent person contrary to law or regulation, such that bodily injury or serious bodily injury results”



Talking Points:

- A perpetrator may physically restrain (tie or bind) or chemically restrain (drug or over-medicate) a victim for the purpose of sexual abuse.
- An important law to keep in mind when dealing with specific elder sexual abuse cases where chemical (medication) or physical restraint was used.
- The perpetrator must be a paid caregiver.

Pennsylvania Department of Aging Older Adults Protective Services Report 2001-02

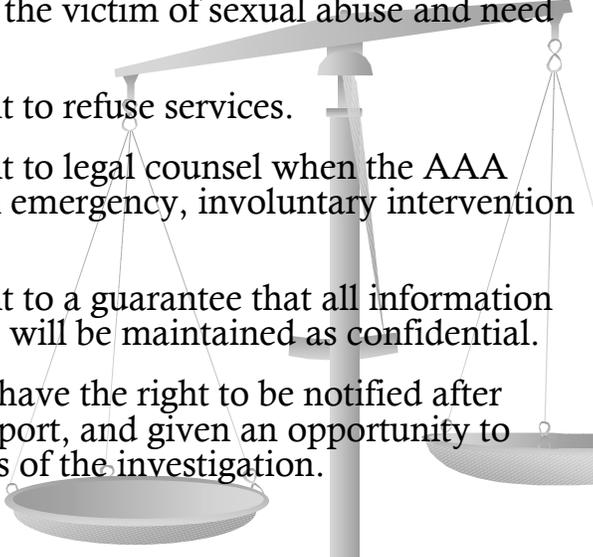


Talking Points:

- The reports of sexual abuse started to go up with the implementation of mandatory reporting and have been increasing steadily since 1997 when Act 13 was passed.

Source: 2001-2002 Older Adult Protective Services Report, Pennsylvania Department of Aging. <http://www.aging.state.pa.us>

Safeguards for Victims

- Victims have the right to be told that someone reported that he/she might be the victim of sexual abuse and need protective services.
 - Victims have the right to refuse services.
 - Victims have the right to legal counsel when the AAA attempts to obtain an emergency, involuntary intervention court order.
 - Victims have the right to a guarantee that all information concerning their case will be maintained as confidential.
 - Alleged perpetrators have the right to be notified after substantiation of a report, and given an opportunity to challenge the findings of the investigation.
- 

Talking Points:

- These safeguards are from PA Victim's Bill of Rights.
- Many seniors use these rights and reject protective services.
- A victim's permission to receive protective services is not required if ordered by a court, requested by the older adult's court-appointed guardian or provided as part of an involuntary, emergency intervention court order issued because of imminent risk of death or serious physical injury.
- Perpetrators of substantiated elder abuse cases must be notified "as soon as reasonable."

Elder Abuse Protective Laws

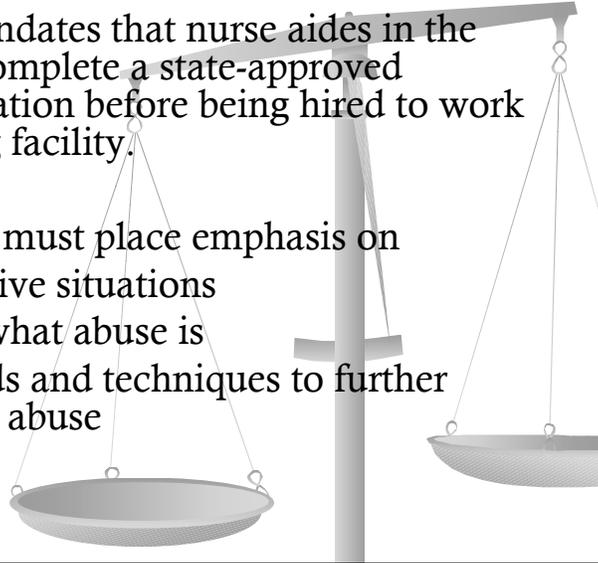


Nurse Aide Resident Abuse Prevention Act

Act 14 of 1997 mandates that nurse aides in the Commonwealth complete a state-approved training and evaluation before being hired to work in a skilled nursing facility.

The training effort must place emphasis on

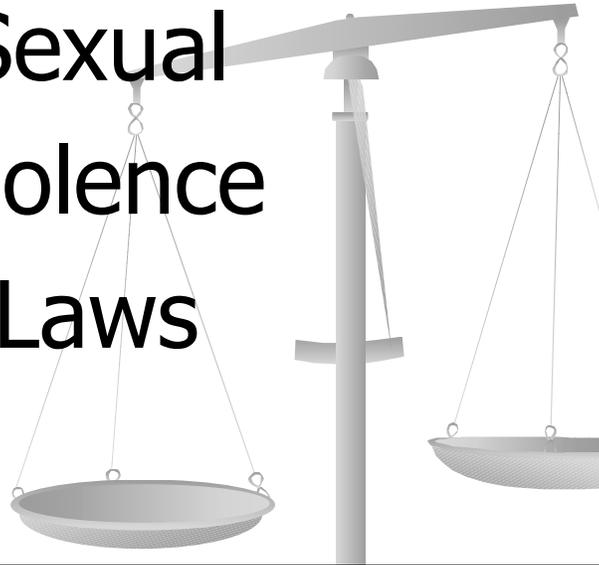
- identifying abusive situations
- understanding what abuse is
- learning methods and techniques to further prevent resident abuse



Talking Points:

- The training must be at least 75 hours.
- Topics covered:
 - Mandatory abuse reporting
 - Identifying types, examples and indicators of abuse, including sexual abuse

Sexual Violence Laws



Rape is committed if sexual intercourse occurs

- By forcible compulsion
- By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution
- When the complainant is unconscious or where the person knows that the complainant is unaware that the intercourse is occurring
- Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of complainant, drugs, intoxicants or other means for the purpose of preventing resistance
- Who suffers from a mental disability which renders the complainant incapable of consent

Talking Points:

- Bullets 1 and 2:** By force or threat of force.
- Bullet 3:** Sleeping is considered unconscious.
- Bullet 4:** Could include prescribed medication for pain, conditions, etc.
- Bullet 5:** Includes dementia and cognitive disabilities.

PA Sexual Violence Statutes

Rape

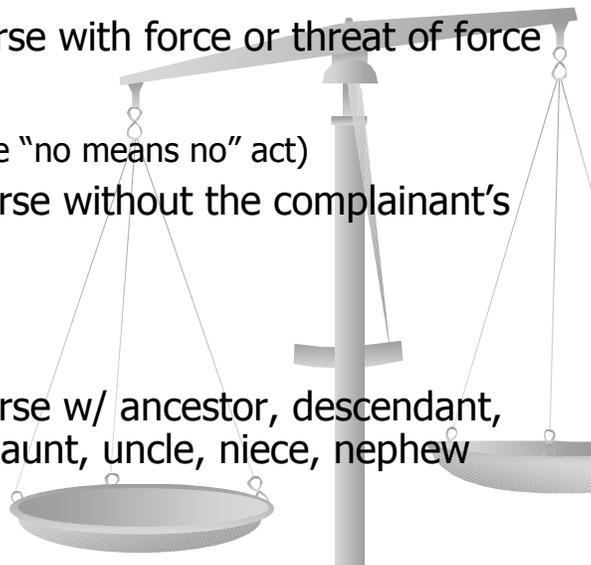
- sexual intercourse with force or threat of force
- Felony 1

Sexual Assault (the “no means no” act)

- Sexual intercourse without the complainant’s consent
- Felony 2

Incest

- Sexual intercourse w/ ancestor, descendant, brother, sister, aunt, uncle, niece, nephew
- Felony 2



Talking Points:

- The difference between rape and sexual assault is the use of force or threat of force.
- Sexual assault is the “no means no” act—no force is necessary, but if the victim says no, sex is sexual assault.
- Sexual intercourse is penetration however slight.

Definitions:

Sexual intercourse, in addition to its ordinary meaning, includes oral or anal intercourse, with some penetration however slight; ejaculation is not required.

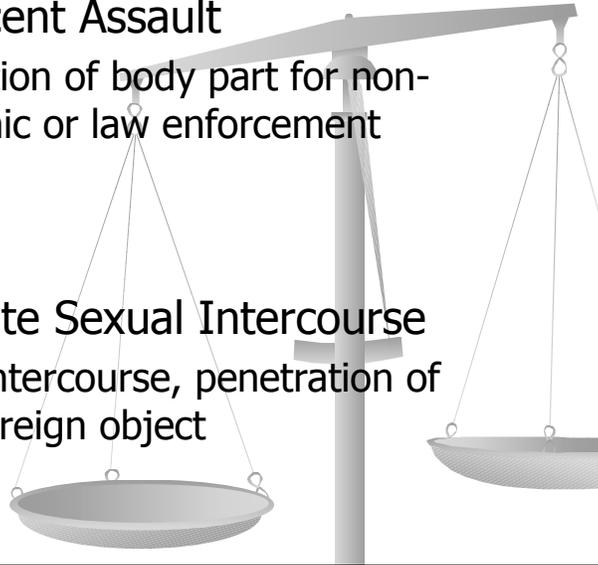
PA Sexual Violence Statutes

Aggravated Indecent Assault

- Digital penetration of body part for non-medical, hygienic or law enforcement procedures
- Felony 2

Involuntary Deviate Sexual Intercourse

- Oral and anal intercourse, penetration of genitals by a foreign object
- Felony 2



Talking Points:

- Aggravated Indecent Assault—only digital penetration, however slight.
- Involuntary Deviate Sexual Intercourse—all penetration, however slight, includes intercourse with an animal.

Definitions:

Deviate sexual intercourse—sexual intercourse including vaginal, oral or anal, between human beings and any form of intercourse with an animal. The term also includes penetration, however slight, of the genitals or anus of another person with a foreign object for any purpose other than good-faith medical, hygienic or law enforcement procedures.

PA Sexual Violence Statutes

Indecent Assault

- Indecent contact or causes indecent contact
- Misdemeanor 2

Indecent Exposure

- Exposing genitals in public place
- Misdemeanor 2

Open Lewdness

- Any offensive lewd behavior determined by community standards
- Misdemeanor 3



Definitions:

Indecent contact —any touching of the sexual or other intimate body parts for the purpose of arousing or gratifying sexual desire in either person.

Consent

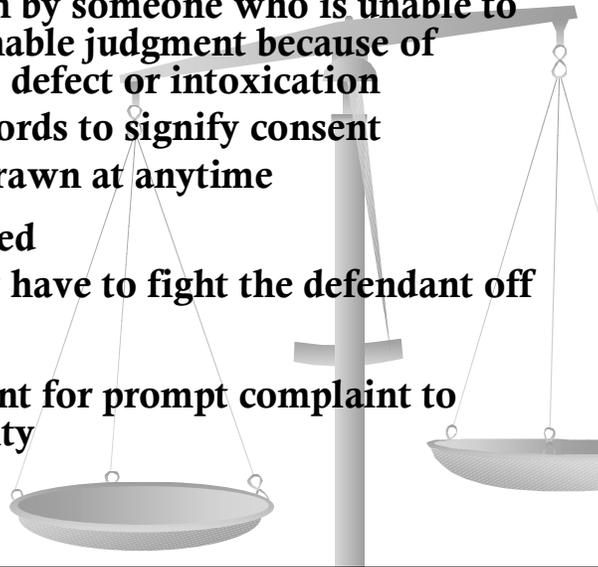
- **Can't be induced by force, duress or deception**
- **Can't be given by someone who is unable to make a reasonable judgment because of youth, mental defect or intoxication**
- **No specific words to signify consent**
- **Can be withdrawn at anytime**

No resistance required

- **Victim doesn't have to fight the defendant off**

Prompt Complaint

- **No requirement for prompt complaint to public authority**



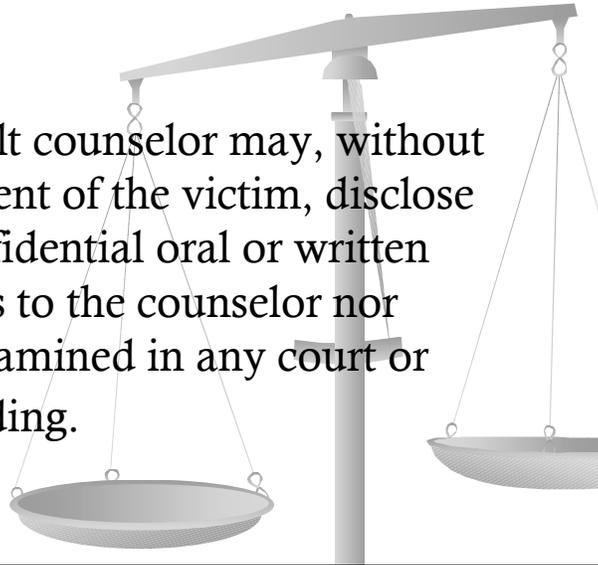
Talking Points:

- These rules apply to all laws discussed as Pennsylvania sex crimes.
- The person does not have to say no, s/he has to say yes or otherwise indicate consent.
- If the person is intoxicated from drugs or alcohol, s/he cannot legally give consent.
- If the person says yes to sexual activity, s/he must vocalize or *otherwise indicate* in a clear manor if s/he withdraws consent. Otherwise indicate means crying, physically withdrawing, pulling away, etc.

Confidential Communications to Sexual Assault Counselors

Privilege

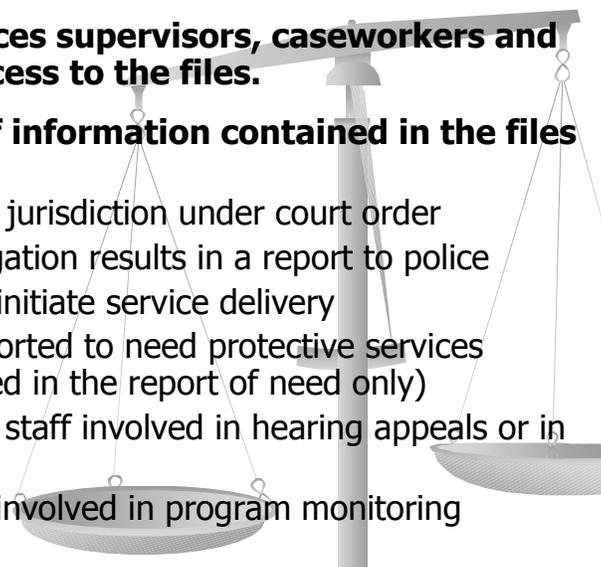
No sexual assault counselor may, without the written consent of the victim, disclose the victim's confidential oral or written communications to the counselor nor consent to be examined in any court or criminal proceeding.



Talking Points:

- If a complainant chooses to see a sexual violence counselor/advocate, the discussions will not be admitted into a court of law, including if the conversations occur in private or with multiple victims or counselors. If the victim provides written consent, specified records can be admitted into court proceedings.

Confidentiality for AAA Protective Services

- **The protective services file must be kept locked and separated from other agency files.**
 - **Only protective services supervisors, caseworkers and clerical staff have access to the files.**
 - **Limited disclosure of information contained in the files is permitted only to:**
 - a court of competent jurisdiction under court order
 - police, if AAA investigation results in a report to police
 - service providers, to initiate service delivery
 - The older person reported to need protective services (information contained in the report of need only)
 - Department of Aging staff involved in hearing appeals or in program monitoring
 - local administrators involved in program monitoring
- 

Talking Points:

- The protective service field report includes the report of need for protective services, completed investigation forms, client assessment, service plan and other information.

Module 5

Activities

**How Pennsylvania
Laws Apply to Elder
Sexual Abuse**

Module 5

Handouts

**How Pennsylvania
Laws Apply to Elder
Sexual Abuse**

How Pennsylvania Laws Apply to Elder Sexual Abuse



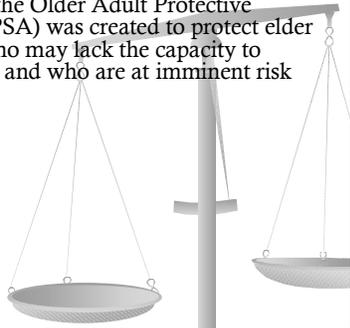
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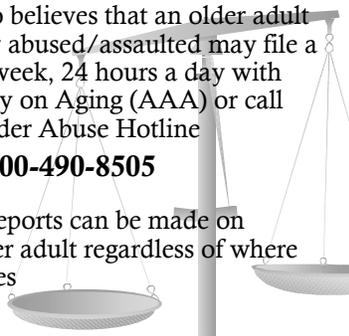


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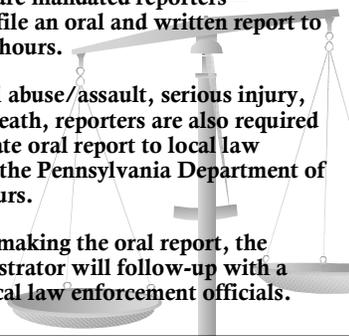
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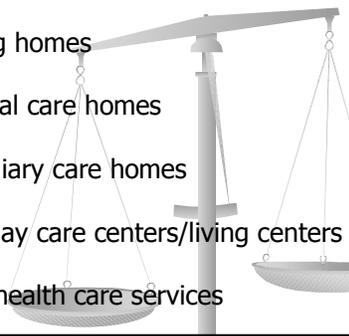
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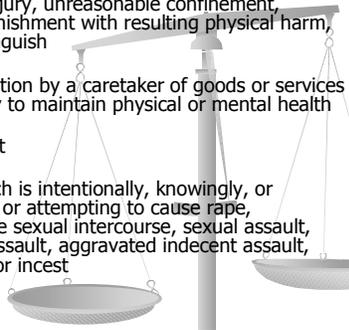
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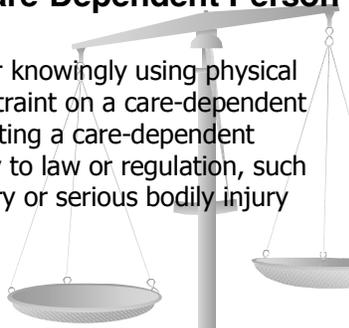
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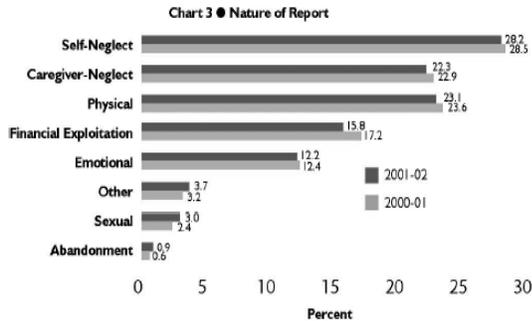


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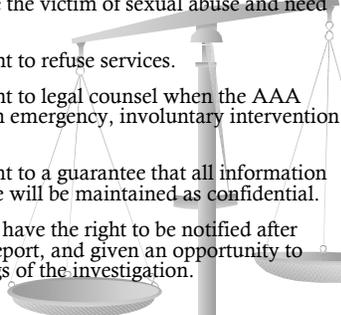


Pennsylvania Department of Aging
 Older Adults Protective Services Report 2001-02



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**Elder Abuse
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 Laws**

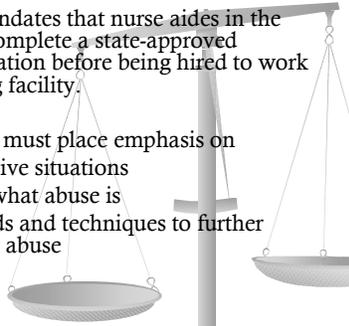


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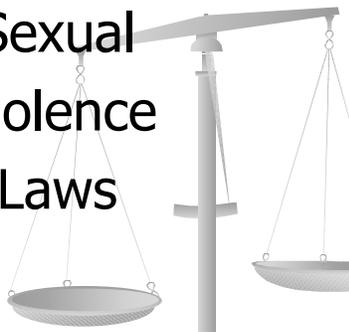
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The training effort must place emphasis on

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- understanding what abuse is
- learning methods and techniques to further prevent resident abuse



Sexual Violence Laws



Rape is committed if sexual intercourse occurs

- By forcible compulsion
- By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution
- When the complainant is unconscious or where the person knows that the complainant is unaware that the intercourse is occurring
- Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of complainant, drugs, intoxicants or other means for the purpose of preventing resistance
- Who suffers from a mental disability which renders the complainant incapable of consent

PA Sexual Violence Statutes

Rape

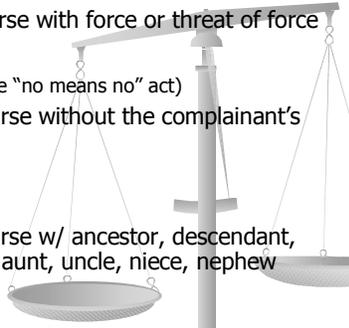
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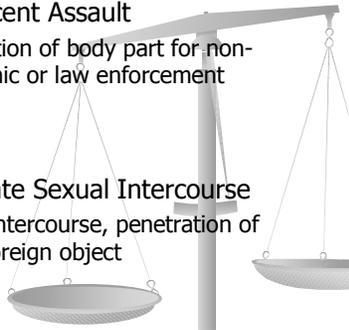
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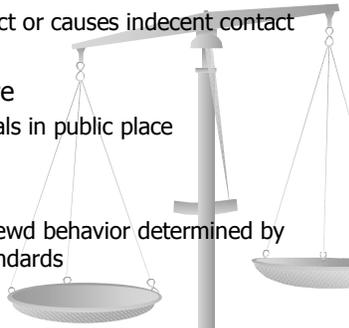
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Consent

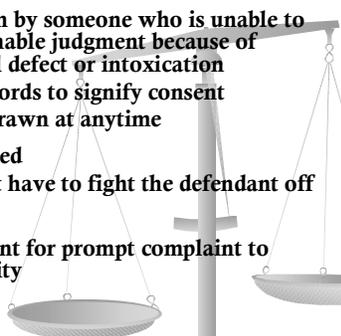
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- Can be withdrawn at anytime

No resistance required

- Victim doesn't have to fight the defendant off

Prompt Complaint

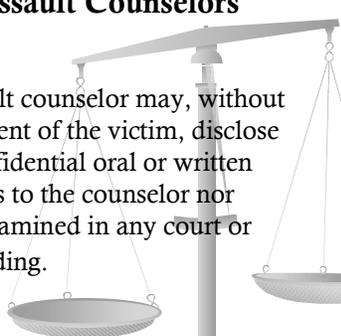
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Confidential Communications to Sexual Assault Counselors

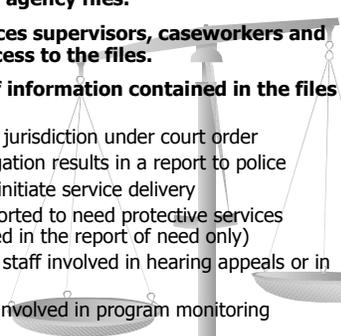
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 - local administrators involved in program monitoring



Pennsylvania Sexual Violence Laws

DEFINITIONS

§ 3101. Definitions

Subject to additional definitions contained in subsequent provisions of this chapter which are applicable to specific provisions of this chapter, the following words and phrases, when used in this chapter, shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Complainant." An alleged victim of a crime.

"Deviate sexual intercourse." Sexual intercourse per os or per anus between human beings and any form of sexual intercourse with an animal. The term also includes penetration, however slight, of the genitals or anus of another person with a foreign object for any purpose other than good-faith medical, hygienic or law enforcement procedures.

"Forcible compulsion." Compulsion by use of physical, intellectual, moral, emotional or psychological force, either expressed or implied. The term includes, but is not limited to, compulsion resulting in another person's death, whether the death occurred before, during or after sexual intercourse.

"Foreign object." Includes any physical object not a part of the actor's body.

"Indecent contact." Any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in either person.

"Sexual intercourse." In addition to its ordinary meaning, includes intercourse per os or per anus, with some penetration however slight; ejaculation is not required.

PA SEXUAL VIOLENCE STATUTES

§ 3121. RAPE

(a) Offense defined.--A person commits a felony of the first degree when he or she engages in sexual intercourse with a complainant:

- (1) by forcible compulsion.
- (2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution.
- (3) who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring.
- (4) where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance.
- (5) who suffers from a mental disability which renders the complainant incapable of consent.
- (6) Who is less than 13 years of age.

(b) Additional penalties.--In addition to the penalty provided for by subsection (a), a person may be sentenced to an additional term not to exceed ten years' confinement and an additional amount not to exceed \$100,000 where the person engages in sexual intercourse with a complainant and has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, any substance for the purpose of preventing resistance through the inducement of euphoria, memory loss and any other effect of this substance.

§ 3123. INVOLUNTARY DEVIATE SEXUAL INTERCOURSE

(a) Offense defined.--A person commits a felony of the first degree when he or she engages in deviate sexual intercourse with a complainant:

- (1) by forcible compulsion;
- (2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- (3) who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring;
- (4) where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
- (5) who suffers from a mental disability which renders him or her incapable of consent;
- (6) who is less than 13 years of age; or
- (7) who is less than 16 years of age and the person is four or more years older than the complainant and the complainant and person are not married to each other.

(b) Definition.--As used in this section, the term "forcible compulsion" includes, but is not limited to, compulsion resulting in another person's death, whether the death occurred before, during or after the sexual intercourse.

§ 3124.1. SEXUAL ASSAULT

Except as provided in section 3121 (relating to rape) or 3123 (relating to involuntary deviate sexual intercourse), a person commits a felony of the second degree when that person engages in sexual intercourse or deviate sexual intercourse with a complainant without the complainant's consent.

§ 3124.2. INSTITUTIONAL SEXUAL ASSAULT

(a) General rule.-- Except as provided in sections 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault) and 3125 (relating to aggravated indecent assault), a person who is an employee or agent of the Department of Corrections or a county correctional authority, youth development center, youth forestry camp, state or county juvenile detention facility, other licensed residential facility serving children and youth, or mental health or mental retardation facility or institution commits a felony of the third degree when that person engages in sexual intercourse, deviate sexual intercourse or indecent contact with an inmate, detainee, patient or resident.

(b) Definition.--As used in this section, the term "agent" means a person who is assigned to work in a state or county correctional or juvenile detention facility, a youth development center, youth forestry camp, other licensed residential facility serving children and youth, or mental health or mental retardation facility or institution who is employed by any state or county agency or any person employed by an entity providing contracted services to the agency.

§ 3125. AGGRAVATED INDECENT ASSAULT

Except as provided in sections 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse) and 3124.1 (relating to sexual assault), a person who engages in penetration, however slight, of the genitals or anus of a complainant with a part of the person's body for any purpose other than good-faith medical, hygienic or law enforcement procedures commits aggravated indecent assault, a felony of the second degree, if:

- (1) the person does so without the complainant's consent;
- (2) the person does so by forcible compulsion;
- (3) the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- (4) the complainant is unconscious or the person knows that the complainant is unaware that the penetration is occurring;

- (5) the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
- (6) the complainant suffers from a mental disability which renders him or her incapable of consent;
- (7) the complainant is less than 13 years of age; or
- (8) the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

§ 3126. INDECENT ASSAULT

(a) Offense defined.--A person who has indecent contact with the complainant or causes the complainant to have indecent contact with the person is guilty of indecent assault if:

- (1) the person does so without the complainant's consent;
- (2) the person does so by forcible compulsion;
- (3) the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- (4) the complainant is unconscious or the person knows that the complainant is unaware that the indecent contact is occurring;
- (5) the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
- (6) the complainant suffers from a mental disability which renders him or her incapable of consent;
- (7) the complainant is less than 13 years of age; or
- (8) the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

(b) Grading.--Indecent assault under subsection (a) (7) is a misdemeanor of the first degree. Otherwise, indecent assault is a misdemeanor of the second degree.

§ 3122.1. Statutory sexual assault

Except as provided in section 3121 (relating to rape), a person commits a felony of the second degree when that person engages in sexual intercourse with a complainant under the age of 16 years and that person is four or more years older than the complainant and the complainant and the person are not married to each other.