

# TASKFORCE RECOMMENDATIONS FOR AN ABUSE/NEGLECT REGISTRY IN PENNSYLVANIA

Comprehensive recommendations provided by the Abuse/Neglect Registry Taskforce for statutory and operational changes required to close gaps in Pennsylvania's protective services systems for adults with disabilities and older adults.

November 30, 2022

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## Executive Summary

The Commonwealth of Pennsylvania strives to continually improve systems to protect vulnerable populations from abuse and neglect. To this end, Governor Wolf issued Executive Order 2019-05 Protection of Vulnerable Populations, which outlines a myriad of activities aimed at strengthening approaches. Additionally, in February 2022, the Wolf Administration created the Abuse/Neglect Registry Taskforce to address a gap in protection created by having no systematic method for tracking perpetrators of abuse or neglect of adults with disabilities in the Commonwealth. Agencies that provide services to adults with disabilities currently do not have access to information related to substantiated abuse or neglect cases in which a prospective employee was the perpetrator. Adults with disabilities, including older Pennsylvanians, may experience avoidable harm when perpetrators of abuse and neglect are able to move from job to job without detection.

The Abuse/Neglect Registry Taskforce assembled and began meeting in March 2022. The Taskforce is comprised of a membership including: adults with disabilities; family members; protective services experts; Departments of Human Services (DHS), Health (DOH), Aging (PDA), and Education (PDE) counsel, program and protective services staff; provider association representatives; advocacy organization representatives; and the four Executive Directors from the Human Services Committees in the General Assembly.

The Taskforce was given the following objectives: outline desirable parameters for a registry, identify challenges for implementation and provide recommendations for the adoption and implementation of an Abuse/Neglect Registry in Pennsylvania.

A majority of states maintain abuse/neglect registries of perpetrators. These registries vary significantly in scope, populations covered, perpetrators included, length of time perpetrators are listed on registry, and the private or public nature of the registry. The Taskforce had the benefit of learning from these states to inform its discussion and decision-making. The Taskforce was also able to draw upon the expertise from existing registries in the Commonwealth, namely Childline and the Certified Nursing Assistant registries.

Unlike many other states that narrowly define covered populations and registerable perpetrators based on criteria like funding streams or diagnosis, the Taskforce is ultimately recommending an inclusive definition of the population covered with this potential new protection and a similarly inclusive definition of perpetrator. The Taskforce was absolute in a desire to strengthen protective services for *all* vulnerable Pennsylvanians. The recommendations presented here are, therefore, well aligned with the approach to child protective services in the Commonwealth.

The recommendations included in this document, with few exceptions, reflect a consensus of members and provide a blueprint for legislation and operational considerations.

## Taskforce Membership

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## Taskforce Recommendations

### *Registry Purpose*

To protect vulnerable Pennsylvanians by preventing exposure to caregivers who have a history of substantiated abandonment, abuse, exploitation, or neglect.

### *Populations Protected*

Adults with disabilities. An adult with a disability is defined as a resident of this Commonwealth 18 years of age or older who has a physical or mental impairment that substantially limits one or more major life activities.

### *Registered Perpetrators of Abuse or Neglect*

Any individual (1) 18 years of age or older (at the time of the offense) who was a target of a protective services investigation that substantiated the abuse, neglect, abandonment, or exploitation of an adult with a disability, (2) any individual convicted of neglect of a care dependent person as defined at 18 Pa.C.S. § 2713, or (3) any individual convicted of crimes falling under Title 18, Chapter 27 (Assault), 31 (Sexual Offenses), 39 (Theft and Related Offenses) or 43 (Incest) of the Pennsylvania Consolidated Statutes where the victim is an adult with a disability.

### *Registerable Offenses*

Offense Title	Offense Description (from APS Statute, 35 P.S. § 10210.103)	Additional Requirements for Offense to be Registerable
Abandonment	The desertion of an adult by a caregiver.	Person <i>knowingly</i> abandons their responsibilities without justification and evades their duties that results in an act by which a person was harmed or was at imminent risk of harm.
Abuse	The occurrence of one or more of the following acts:	#1 – Person <i>willfully, recklessly or negligently</i> inflicts injury...

	<p>(1) The infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.</p> <p>(2) The willful deprivation by a caregiver of goods or services which are necessary to maintain physical or mental health.</p> <p>(3) Sexual harassment, rape or abuse as the term is defined in 23 Pa.C.S. § 6102 (relating to definitions). The term does not include environmental factors which are beyond the control of an adult or a caregiver, including, but not limited to, inadequate housing, furnishings, income, clothing or medical care.</p>	<p>#2 – No additional standard #3 – Person <i>willfully, recklessly or negligently</i> commits sexual harassment, rape...</p>
Exploitation	<p>An act or course of conduct by a caregiver or other person against an adult or an adult’s resources without the informed consent of the adult or with consent obtained through misrepresentation, coercion or threats of force, that results in monetary, personal or other benefit, gain or profit for the perpetrator or monetary or personal loss to the adult.</p>	<p>Person <i>willfully</i> commits an act or...</p>
Financial Exploitation (text from HB1681)	<p>The wrongful or unauthorized taking or attempt to take by withholding, appropriation, concealment or use of money, assets or property of an adult, including any act or omission taken by a person, including through the use of a power of attorney, guardianship, custodian, trustee, personal representative or conservatorship of an adult or by an individual who stands in a position of trust and confidence with the adult, including business transactions to: (1) obtain or attempt to obtain control, through deception, intimidation or undue influence, over</p>	<p>Person <i>willfully</i> commits the wrongful...</p> <p>Thresholds for inclusion:</p> <ol style="list-style-type: none"> <li>1) Individual experiences financial harm; or</li> <li>2) Perpetrator responsible for multiple instances of harm to the same individual or multiple individuals.</li> </ol>

	<p>the adult's money, assets or property to deprive the adult of the ownership, use, benefit or possession of the adult's money, assets or property; or (2) convert or attempt to convert money, assets or property of the adult to deprive the adult of the ownership, use, benefit or possession of the adult's money, assets or property.</p>	
Neglect	<p>The failure of a caregiver to provide goods, care or services essential to avoid a clear and serious threat to the physical or mental health of an adult.</p> <p>The term does not include environmental factors that are beyond the control of an adult or the caregiver, including, but not limited to, inadequate housing, furnishings, income, clothing or medical care.</p>	<p>The caregiver <i>willfully</i> or <i>recklessly</i> fails to provide goods...</p>
Serious bodily injury	<p>Injury that:</p> <p>(1) creates a substantial risk of death; or</p> <p>(2) causes serious permanent disfigurement or protracted loss or impairment of the function of a body member or organ.</p>	<p>Subcategory of abuse</p> <p>Person is responsible for <i>willfully, recklessly or negligently</i> causing an injury that...</p>
Serious injury	<p>An injury that:</p> <p>(1) causes a person severe pain; or</p> <p>(2) significantly impairs a person's physical or mental functioning, either temporarily or permanently.</p>	<p>Subcategory of abuse</p> <p>Person is responsible for <i>willfully, recklessly or negligently</i> causing an injury that...</p>
Sexual abuse	<p>Intentionally, knowingly or recklessly causing or attempting to cause rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault or incest, as defined by 18 Pa.C.S. (relating to crimes and offenses).</p>	<p>Subcategory of abuse</p>

<p>Failure to Report by Mandatory Reporter</p>	<p>Failure to report abandonment, abuse, neglect, or exploitation as defined in the Adult Protective Services or Older Adult Protective Services statutes.</p>	<p>Person is responsible for <i>willfully or repeatedly</i> not reporting an instance of abandonment, abuse, neglect, or exploitation.</p> <p>Person had <i>reasonable cause</i> to suspect abuse, neglect, abandonment, or exploitation and failed to report. This applies whether the person is a direct witness or is employed in a supervisory or managerial capacity and has a responsibility to report as a mandated reporter.</p>
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### Burden of Proof for Inclusion on Registry

Clear and convincing evidence substantiating that an alleged perpetrator committed a registerable offense is required for inclusion on the registry.

Clear and convincing evidence means that the evidence presented leaves the decision maker with a firm belief or conviction that it is highly probable that the factual contentions of the offense are true. This is a higher standard of proof than proof by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt.

### Investigative Process

Substantiated offenses committed by an alleged perpetrator will be determined by applying a clear and convincing burden of proof following an independent investigation. A review of an investigation will be initiated for any credible report of a registerable offense as defined above.

The investigative process will be clearly defined and performed by trained and qualified independent investigators. Clear standards will be established for conducting investigations (including chain of custody and evidence collection standards), reconciliation of evidence, document retention, protection of privacy and confidentiality, and the determination of substantiated abuse.

The investigative process must include the elements of speed, thoroughness, and objectivity.

### Review Panel Prior to Registry Placement

A panel comprised of personnel from DHS and PDA will review investigation findings in which an alleged perpetrator is substantiated to have committed a registerable offense. A process



with clearly defined parameters and duties for reviewers will be established to confirm the finding of substantiated abuse, neglect, abandonment, or exploitation prior to the placement of an identified perpetrator on the registry.

### *Notification and Appeals Process for Individuals Placed on Registry*

A person who was found to have committed a registerable offense using a clear and convincing evidentiary standard will be notified that they are being placed on the registry. Upon determination that a person has committed a registerable offense, the person's name will be placed on the registry.

#### Notification

Notification to individuals that their name is being placed on the registry must occur electronically, if electronic contact information is available, and by certified and registered mail.

Notification to the employer at the time of the incident must also be provided electronically, if electronic contact information is available, and by certified and registered mail.

If applicable, notification to any current employers must also be provided electronically, if electronic contact information is available, and by certified and registered mail.

Notifications are to include the individual's name, the date and type of registerable offense(s) that was substantiated and confirmed by the review panel.

#### Appeals Process

A person found to have committed a registerable offense has 90 days from the date the notification of the determination was sent to appeal the decision. During this period the registry will note "pending appeal" and, if an appeal is filed, this designation will remain until the case is adjudicated. If an individual placed on the registry files an appeal within 90 days of notification, an administrative review modelled after the Childline administrative review process will occur within 60 days of the filing date of the appeal. An individual may request to forgo the administrative review process.

If through administrative review the determination that the individual committed a registerable offense is reversed, the individual's name will be removed from the registry. If through administrative review the determination is affirmed, the case will move on to the Bureau of Hearings and Appeals (BHA) for adjudication of the decision to place an individual's name on the registry.

Notification of the determinations made through the administrative review process and the appeal process should mirror the notification requirements for the initial notification that an individual is being placed on the registry.

## *Timeframe for Inclusion on Registry*

An individual who was found to have committed a registerable offense using a clear and convincing evidentiary standard will be placed on the abuse/neglect registry indefinitely.

### *Good Cause Review*

After 5 years, an individual placed on the registry may file a reconsideration with the Secretary of Human Services to evaluate the continued inclusion of the individual's name on the registry. If the request for reconsideration is denied by the Secretary, the individual may file an appeal with the BHA.

An individual may not submit more than one appeal annually after the 5-year period.

If an individual who has been on the registry for 5 or more years files an appeal, the following factors will be considered when determining if the individual's name should be removed from the registry:

- Facts surrounding the offense(s) and nature of the offense(s)
- Severity and any recurrence or patterns of offense(s)
- Activities the individual has undertaken to rehabilitate or otherwise address potential underlying causes of behavior that led to committing of registerable offenses.
- Employment or care history since inclusion on the registry that are relevant to the question of whether the individual poses a danger to adults with disabilities.

## *Access to Registry*

The registry will be web-based and publicly available to anyone with a registered account which will allow for any employer, including non-DHS licensed or funded employers, to access the information in the registry.

Employers seeking access to the registry must complete and sign an attestation form prior to obtaining access to the database. The attestation is to ensure that users are accessing for the sole purpose of conducting background checks for prospective or current employees.

The design for availability and use should parallel the existing Medicaid Exclusion List.

The registry will list that the individual is either a registered offender or a registered offender pending appeal but will not contain information about the offense.

A prospective employer may request the date and registerable offense from the Department as part of a background check for individuals who appear on the registry.

The registry platform procurement and design should anticipate housing data from other existing Commonwealth registries (primarily Childline and DOH's Certified Nurse Assistant registries) to provide a singular registry related to the protection of vulnerable Pennsylvanians.

## *Use of Registry*

DHS, PDA, or DOH licensed or publicly funded providers or individuals serving adults with disabilities should be required to check the registry prior to hire and at 5-year intervals thereafter. Including this requirement in statute would ensure broad application of the requirement.

Additionally, statutory changes should include requirements to check neighboring state registries, when applicable, for prospective employees who live out of state or who have lived out of state.

## *Employer Obligations*

The addition of the registry to the protective services system is not intended to change law that protects employee rights. Employers licensed or funded through DHS, PDA, or DOH to serve adults with disabilities would have the following obligations:

- Check the registry prior to hire
- Maintain and implement policy and procedures governing supervision plans related to individuals who appear on the registry including individuals that appear in pending status or indefinite status.

## Major Implementation Considerations

### *Adult Protective Services (APS)*

The APS statute, subsequent draft regulations, and procedures do not provide for the identification or investigation of an alleged perpetrator(s). There is currently no provision within the APS statute providing authority to name or investigate an alleged perpetrator(s).

To implement an abuse and neglect registry the following will be required:

- Amend the APS statute to include provisions related to the identification and investigation of potential perpetrators of abuse and neglect
- Amend or promulgate corresponding regulations governing the identification and investigation of potential perpetrators of abuse and neglect
- Revise investigation procedures and curriculum and re-train APS investigators to investigate to identify and determine perpetrators of abuse and neglect
- Support investigatory changes through IT changes

### *Older Adult Protective Services (OAPS)*

The OAPS statute, subsequent regulations and, procedures will also require amendments. OAPS provides for appeal rights to an alleged perpetrator named in a protective services report, but that report is not publicly available nor is the alleged perpetrator placed on a registry. To establish a registry of offenders, PDA will need specific language authorizing the registry.

### *Record Retention*

Amendments will be needed to both APS and OAPSA to authorize record retention policies that would support both detection of potential offenders over time (retain unsubstantiated reports) and allow for tracking and management of the indefinite inclusion of perpetrators of registerable offenses (substantiated reports). Current record retention policies for APS follow 35 P.S. §§ 10210.101--10210.704.

### *Additional Personnel*

The changes to APS to require investigation of an alleged perpetrator(s) and the administration of a registry including notifications, administrative reviews, and appeals will require additional resources for both the Commonwealth's APS vendor and the Commonwealth.

The Commonwealth's current APS vendor would be unable to meet the requirements outlined in these recommendations without additional investigators. DHS does not have adequate

staffing in BHA to manage the anticipated increase in appeals. Nor does DHS have adequate staff to absorb the work of managing the contemplated notification requirements, administrative review processes, development, and maintenance of the registry, and conducting analytics and reporting.

### *Direct Care Worker/Direct Support Professional Identification*

An implementation consideration is whether the assignment of unique identifiers to all paid caregivers known to DHS and PDA is required for successful implementation of a registry.

The Commonwealth does not assign or maintain unique identifiers for direct care workers or direct support professionals in adult service systems unless they are Certified Nursing Assistants or subject to Electronic Visit Verification (EVV) requirements.

Tracking allegations associated with a particular worker without unique identifiers may be problematic, though the new OAPSA IT system holds some promise for functionality to track using Social Security Numbers and Date Of Birth.

The registry as recommended will go well beyond workforce in DHS and PDA so unique identifiers would have some limited utility.

### *Minor Perpetrators*

For perpetrators who are minors at the time of the substantiated abuse or neglect, the Taskforce recommends implementing a policy that parallels that of Childline.

Childline's policy related to minor perpetrators includes expungement of the record if all of the following conditions are met:

- The perpetrator is over 21 years of age currently.
- The perpetrator was under the age of 18 when the abuse or neglect occurred.
- The perpetrator has been on the registry for 5 years or longer.
- The perpetrator has not been named in any subsequent indicated report or a report that is pending investigation.
- The perpetrator has never been convicted or adjudicated delinquent by a court for offenses under 23 Pa. C.S. § 6344(c).
- The perpetrator did not use a deadly weapon as defined at 18 Pa. C.S. § 2301.
- The outcome does not have a founded status.
- The perpetrator is not a sexually violent offender, as defined in 42 Pa. C.S. § 9799.12.
- The perpetrator is not required to register as a sexual offender.

Given the public nature of the registry, handling of registered perpetrators who were minors at the time of the incident may need to be different in terms of the posted information.

## *Funding*

Options for some cost sharing that could be considered are:

1. Require an annual fee to have an account to access the registry (preferred option, if cost sharing is required).
2. Require a per background check fee.

The Taskforce recommends that if cost sharing is desirable or required, that: (1) any additional fees be considered in the context of the other required background checks for DHS, DOH, and PDA funded or licensed providers in terms of cost and resources to manage; (2) the administrative burden of managing collection and processing of fees is included in the deliberations; (3) fees do not create a burden for small employers or individuals self-directed their services; and (4) costs associated with provider compliance with registry requirements are accounted for in any applicable rate setting processes conducted by DHS and PDA.

## *Outreach and Training*

The implementation of the registry should include broad information dissemination to all stakeholders in accessible formats including simplified language.

The Commonwealth should develop and provide training and informational materials for DHS and PDA funded employers on the registry including obligations for background checks.

## *Equity Impact Analysis*

With implementation of the registry an equity analysis should be designed and conducted to ensure that the registry does not have disparate impacts on caregivers by race.

## Additional Recommendations to Strengthen Protective Services in Pennsylvania

1. Amend OAPSA definition of “care dependent individual” to include sensory, communication and psychiatric disabilities.
2. Amend OAPSA and APS to include “institutional sexual assault”. This includes sexual relationships between staff and service recipients regardless of consent, as consent between staff (people in a position of authority) and individuals is not permitted by law.
3. Review and revise as necessary the *Immunity* sections in OAPSA and APS to ensure that amendments to support the authorization and implementation of the registry do not weaken immunity protections for employers.
4. Upon the passage of statutory changes required for implementation of a caregiver abuse registry for adults with disabilities, the Taskforce should reconvene to provide detailed recommendations for a universal registry (inclusive of data from all PA Health and Human services registries) and requirements for child serving providers and adult serving providers to check prior to employment.
5. Upon the passage of statutory changes required for implementation of an abuse registry for adults with disabilities, establish cooperative agreements with neighboring states to add the names of registered perpetrators in those states to the PA registry or to create a multi-state registry to protect against substantiated perpetrators or individuals convicted of neglect of a care dependent person crossing state lines and being employed in PA.
6. Assemble workgroup to examine processes for background checks for providers to provide recommendations for the following:
  - Effectiveness and efficiencies. Current processes result in some duplication that is likely unnecessary.
  - Fees and costs to run programs. Fees should not exceed the cost of program administration. The portion of program administration funded through each collected type of fee should be publicly available.
7. Assemble workgroup to examine current structure and processes to simplify reporting in Pennsylvania to institute a “no wrong door” reporting system.
8. Strengthen policies and procedures to ensure that law enforcement reports investigative conclusions back to APS and OAPSA.