

PROTECTING ADULTS




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Presentation Overview



- **Act 387 (SB 391)**
 - “Guardianship Reform”
 - Revises guardianship statute
- **Act 264 (AB 785)**
 - “Chapter 55 Recodification”
 - Revises protective services & placement statutes
- **Act 388 (AB 539)**
 - “APS Modernization”
 - Revises abuse reporting statutes


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Status of New Laws



- www.legis.state.wi.us
- www.cwaag.org/legal/guardian-support
- **2005 Act 387**
 - **Senate Bill 391**
 - Signed by Governor May 10
 - Published May 24
 - Effective 1st of the 7th month after publication
 - December 1, 2006


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Status of New Laws – cont'd



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Status of New Laws – cont'd



- **2005 Act 264**
 - **Assembly Bill 785**
 - Signed by Governor April 5
 - Published April 19
 - Effective 1st of the 7th month after publication
 - November 1, 2006

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Status of New Laws – cont'd



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Status of New Laws – cont'd

- **2005 Act 388**
 - **AB 539**
 - Signed by Governor May 10
 - Published May 24
 - Effective 1st of the 7th month after publication
 - December 1, 2006



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Status of New Laws – cont'd



- Reconciliation bill**
- **2005 SB 731**
 - Passed Senate in May
 - Hearing in Assembly July 6
 - Was not scheduled for vote in Assembly
 - Dead until 2007
 - Expect introduction in January 2007



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Act 387 / SB 391



SUMMARY

- Totally revises the guardianship statute.
- Repeals some parts of Subch. I of Ch. 880.
- Amends virtually every section of Subch. I that's not repealed.
- Renumbers every surviving section.
- Creates new sections.
- Ch. 880 will no longer exist.



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Act 387 – cont'd



- Most everything to new Ch. 54.
- Psych med sections to Ch.55.
- Current Subchs. II – V of Ch. 880 to new Subch. VII in new Ch. 54.
 - Uniform Veterans Guardianship Act
 - Uniform Transfer to Minors Act
 - Securities Owned by Minors, Incompetents and Spendthrifts
 - Uniform Custodial Trust Act



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Act 387 – cont'd



ORGANIZATION

- Subch. I: Definitions
- Subch. II Appointment of Guardian
- Subch. III: Nomination of Guardian; Powers and Duties; Limitations
- Subch. IV: Procedures
- Subch. V: Post-Appointment Matters
- Subch. VI: Conservatorships
- Subch. VII: Uniform Guardianship Acts



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Act 387 – cont'd



SUBCH. I: DEFINITIONS

- degenerative brain disorder
- incapacity
- individual found incompetent
- interested person for purposes of petition for guardianship
- interested person for purposes of proceedings subsequent to an order for guardianship



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Act 387 – cont'd



- least restrictive –
 - that which places the least possible restriction on personal liberty and the exercise of rights and that promotes the greatest possible integration of an individual into his or her community that is consistent with meeting his or her essential requirements for health, safety, habilitation, treatment, and recovery and protecting him or her from abuse, exploitation, and neglect.



serious and persistent mental illness

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SUBCH. II: APPOINTMENT of GUARDIAN

- Contains standards and required findings
- Retains “clear and convincing” standard
- Minor or individual who is incompetent
 - guardian of the person
 - guardian of the estate
 - or both
- Spendthrift
 - guardian of the estate only



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- For an individual who is incompetent, the court must find that that there is no less restrictive means of meeting the need for assistance:
 - “the individual’s need for assistance in decision-making or communication is unable to be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices, or other means that the individual will accept.”



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Act 387 – cont'd



- *and* if appointing a guardian of the person
 - “because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions to such an extent that the individual is unable to meet the essential requirements for his or her physical health and safety.”



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Act 387 – cont'd



- *and* if appointing a guardian of the estate
 - “because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions related to management of his or her property or financial affairs”
 - and one of the following applies:
 - property will be dissipated in whole or in part;
 - unable to provide for his or her support; or
 - unable to prevent financial exploitation.



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- Court must consider specific factors, including –
 - report of GAL;
 - report of psychologist or M.D. or others;
 - any advanced planning;
 - whether guardianship is the least restrictive means of meeting the proposed ward’s needs;
 - the nature and extent of the individual’s care and treatment needs and property and financial needs;
 - whether the proposed ward is at risk of abuse, exploitation, neglect or violation of rights;



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Act 387 – cont'd



- whether the individual can adequately understand and appreciate the consequences of his/her impairment;
- the individual's management of the activities of daily living;
- the individual's understanding and appreciation of the nature and consequences of any inability he or she may have with regard to personal needs or property management;
- any medication and the effect on the individual's behavior, cognition and judgment.



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Act 387 – cont'd



SUBCH. III: NOMINATION; POWERS & DUTIES; LIMITATIONS

- Retains current nomination methods.
- Proposed guardian must submit to the court a sworn and notarized statement
 - ever been convicted of certain crimes,
 - filed for or received bankruptcy protection,
 - had certain professional licenses or certificates suspended or revoked.
 - listed in caregiver registry.



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POWERS & DUTIES

- For both Person & Estate, Guardian's powers limited to those:
 - authorized by statute
 - authorized by court order
 - the least restrictive form of intervention
- Ward retains all rights not assigned to guardian or otherwise limited by statute.



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GUARDIAN of the ESTATE

- Current duties retained but more clearly stated.
- Provide the ward with the greatest amount of independence and self-determination with respect to property management in light of the ward's:
 - functional level,
 - understanding, and appreciation of his or her functional limitations
 - and the ward's personal wishes and preferences with regard to managing the activities of daily living.



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ESTATE POWERS THAT REQUIRE COURT APPROVAL

- Gifting the ward's property:
 - Notice to interested parties required
 - Court must consider –
 - nature and extent of ward's estate and current and future obligations;
 - opinion of any guardian of the person,



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- nature of the property to be transferred,
- wishes of ward if ascertainable,
- past practices of ward,
- whether ward had executed a will or similar instrument,
- the current or future effect on ward's eligibility for public assistance.



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GUARDIAN of the PERSON

- Regularly conduct in-person inspection of ward's condition, surroundings, treatment;
- Examine health care and treatment records;
- Attend staffings,
- Inquire into risks, benefits and alternatives to proposed treatments,
- Consult with providers of health care and social services in making all necessary treatment decisions.



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WARD ALWAYS RETAINS RIGHTS TO

- Have access to and communicate privately with the court / government,
- Have access to, communicate privately with, and retain legal counsel, with fees paid from the income and assets of the ward, subject to court approval.
- Have access to and communicate privately with the protection & advocacy agency and the ombudsman
- Protest a placement, review the need for guardianship and/or protective services.
- Exercise constitutional rights.



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COURT MAY DECLARE an INDIVIDUAL INCOMPETENT TO:

- consent to marriage,
- execute a will,
- serve on a jury,
- consent to sterilization, organ, tissue or bone marrow donation,
- vote.



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Act 387 – cont'd



- Guardian may consent to voluntary or involuntary medical examination and treatment and to the voluntary receipt of medication, including psychotropic medications.
- Guardian may consent to the administration of psychotropic medications, unless ward “protests.”
- Guardian may only consent to the involuntary administration of psychotropic medications under a protective placement order.



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Act 387 – cont'd



SUBCH. IV: PROCEDURES

- Contents of petition same as current law with some additions.
- Failure of petitioner to provide notice to all interested persons deprives the court of jurisdiction unless notice waived.



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Act 387 – cont'd



- Adopts with modification the holding for transfer of a foreign guardianship in *Jane E.P.*
 - does not require that petitioner first get permission of foreign court to transfer guardianship;
 - requires petitioner to give notice to foreign court and interested persons and request certain information from foreign court.



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Act 387 – cont'd



- Venue
 - For state resident, co. of residence or co. where proposed ward is physically present.
 - For non-resident with no guardian, co. where proposed ward or assets may be found or in co. in which petitioner proposes proposed ward reside.
 - For individual under a foreign guardianship, co. where ward resides or intends to reside.



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Act 387 – cont'd



- Provides standards for determination of county of responsibility regardless of disability or facility.
- Provides proposed ward with right to remain silent during examination.
- Permits physician/psychologist to obtain access to proposed ward's health care and treatment records without consent.



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Act 387 – cont'd



- GAL required in more situations -
 - petition for receipt and acceptance of foreign g'ship
 - petition for temporary guardian
 - any action to expand, review or terminate a guardianship
 - any action to review conduct of a guardian.



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Act 387 – cont'd



- Maintains current duties of GAL and adds
 - interview proposed guardian and/or stand-by guardian
 - review any POAs and interview agent(s) & report whether adequate to preclude g'ship.
 - required to attend all hearings.



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Act 387 – cont'd



- Hearings to be held within 90 days
 - no extension
 - Act 264 - Hearing within 60 days with 45 day extension
 - Act 264 - Invol'y psych med hearings w/i 30 days - no extension
 - Sec. 50.06 – within 60 days



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Act 387 – cont'd



- GAL may waive subject's attendance at hearing.
 - Ability of subject to understand and meaningfully participate.
 - Effect of attendance on physical / psychological health.
 - Subject's wishes.
- Hearing must be moved to subject if unable to attend:
 - Residency in facility
 - Physical inaccessibility
 - Lack of transportation.



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Act 387 – cont'd



- Court must dismiss petition if determined that prior advance planning by ward makes guardianship unnecessary.
- POAs to remain in effect unless good cause shown to revoke or limit.



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Act 387 – cont'd



- Specifies process for obtaining temporary guardian
 - requires appointment of GAL;
 - requires hearing which may be held no earlier than 48 hours after filing unless good cause shown;
 - reasonable likelihood that proposed ward is incompetent;
 - court must specify the powers delegated to temporary guardian;



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Act 387 – cont'd



- temporary guardian may not sell real estate or expend more than \$2,000 unless court approves and orders bond.
- 60 days plus 60 days;
- 90 days b/t temporary g'ships.
- Stand-by guardian may act when the primary guardian is unable or unwilling to act.



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Act 387 – cont'd



SUBCH. V: POST-APPOINTMENT MATTERS

- Inventory to include marital property assets, regardless of how titled.
- Inventory must be filed within 60 days, unless court changes due date.
- Annual accounting required of all guardians, including corporate guardians.
- Accounting can be waived for estates smaller than \$20,000 (currently \$5,000).



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Act 387 – cont'd



- Accounting for married ward may be waived or requirements modified.
- Court may require that accountings be provided to certain persons.
- Guardian may request court to order an accounting to the guardian by other individuals or entities of any income or assets of ward.



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Act 387 – cont'd



- Review / modification may be requested by wards age 18 and over, the guardian or anyone on ward's behalf,
 - if at least 180 days since last request
 - or if exigent circumstances.
 - Requires appointment of GAL, hearing with ward present, right to counsel and jury trial.



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Act 387 – cont'd



- Specific criteria for removal of guardian, cause for court action against a guardian and remedies.
 - Failure to file timely inventory or account that is accurate and complete.
 - Fraud, waste, mismanagement.
 - Abusing or neglecting the ward or knowingly permitting others to do so.
 - Self-dealing.



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Act 387 – cont'd



- Failing to provide adequately for the personal needs of the ward.
- Failing to provide due diligence & reasonable care in assuring that personal needs are being met in the least restrictive environment consistent with needs & capacities.
- Hearing within 10 days.
- GAL
- Forfeiture up to \$10,000.



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Act 264 / AB 785



SUMMARY

- Revises the statutes, primarily Ch. 55, governing voluntary and involuntary protective services and placement.
 - Terms & Definitions
 - Procedure
 - Admissions
 - Consent to Meds & Treatment
 - Psych Meds



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Act 264 – cont'd



NEW TERMS & DEFINITONS

- degenerative brain disorder
- serious and persistent mental illness



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Act 264 – cont'd



PROCEDURE

- Must be state resident or have filed a petition to transfer a foreign guardianship.
- Creates procedure for protective services.
- Hearing within 60 days with 45 day extension
 - SB 391: 90 days - no extension
 - Invol'y psych med hearings: 30 days - no extension



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Act 264 – cont'd



- GAL may waive subject's attendance at hearing.
 - Ability of subject to understand and meaningfully participate.
 - Effect of attendance on physical / psychological health.
 - Subject's wishes.
- Hearing must be moved to subject if unable to attend:
 - Residency in facility
 - Physical inaccessibility
 - Lack of transportation.



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Act 264 – cont'd



- Transfer procedures.
 - Guardian, county, facility may transfer.
 - Guardian must consent, unless emergency.
 - 10 days written notice required, unless emergency.
 - Hearing required if objections to proposed transfer or to emergency transfer.



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Act 264 – cont'd



- *Watts* codified.
 - County must conduct review and file report with court.
 - GAL -
 - review county's report and other relevant reports.
 - meet with subject and contact the guardian.
 - orally explain process and rights.
 - file report within 30 days.
 - Annual certification by Registers in Probate.



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Act 264 – cont'd



- Modifying or terminating protective services / placement
 - GAL may petition
 - Hearing within 21 days unless hearing was held within past 6 months; extension may be granted.



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Act 264 – cont'd



ADMISSIONS UNDER 16 BEDS

- Foreign guardianships must petition to transfer guardianship w/i 60 days after admission.
 - Guardian of resident ward may admit for up to 60 days *but* must file petition to transfer foreign g'ship within 60 days.
 - Resident guardian of non-resident ward may admit for up to 60 days *but* must file petition to transfer foreign g'ship within 60 days.



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Act 264 – cont'd



EMERGENCY PROTECTIVE PLACEMENT

- Petition based on “reliable report.”
 - Current: requires personal observation.
- Standard: Probable that individual is so totally incapable of providing for own care or custody as to create a substantial risk of serious harm to self or others.
 - Current: irreparable injury or death.
- Each county must designate a facility.



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Act 264 – cont'd



ADMISSIONS to SNFs

- Family consent transfer from hospitals to nursing homes - § 50.06 (Act 187)
 - Procedure added for objecting resident
- Admission by guardian for recuperative care § 55.05
 - Deletes requirement that resident be transferring from hospital.
 - Expands authority to any facility for which protective placement is otherwise required.



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Act 264 – cont'd



- In need of recuperative care or unable to provide for own care or safety so as to create a serious risk of substantial harm to himself or herself or others.
- Guardian has authority for 60 days (currently 3 months), plus 60 days if petition for protective placement is brought or 30 days for discharge planning if no protective placement petition.
- Admission permitted if ward has primary diagnosis of mental illness or developmental disability *unless* the primary purpose of admission is for treatment or services related to the individual's mental illness or developmental disability.

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Act 264 – cont'd



- If ward is resident of Wisconsin but under foreign g'ship, guardian may admit *if* petition to transfer foreign g'ship and petition for protective placement is filed within 60 days after admission.
- If guardian is resident but ward is non-resident and under foreign g'ship, guardian may admit *if* intending to move ward to Wisconsin within 30 days if a petition to transfer g'ship and petition for protective placement is filed in Wisconsin within 60 days.

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Act 264 – cont'd



VOLUNTARY INPATIENT MENTAL HEALTH TREATMENT

- Retains current law that permits guardian to consent to voluntary admission to inpatient treatment facility if ward also consents.
- Guardian may consent to voluntary admission of ward to an inpatient treatment facility
 - *if* ward does not indicate a desire to leave and
 - *if* the Ch. 51 procedures for voluntary admission are followed.
- Applies to all inpatient treatment facilities, not only county-funded or operated facilities.

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Act 264 – cont'd



INVOLUNTARY ADMISSION to INPATIENT TREATMENT FACILITY

- Can only be accomplished pursuant to emergency detention or involuntary admission statutes.
- Repeals admission sections found unconstitutional by *Watts*.



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Act 264 – cont'd



CONSENT to ADMINISTRATION of MEDICATION and TREATMENT

- Guardian, unless powers otherwise limited by court, may consent to involuntary administration of medication, other than psychotropic medication, and to involuntary medical treatment that is in the ward's best interests.



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Act 264 – cont'd



PSYCH MEDS

- Guardian may consent to psych meds *if* has made a good faith attempt to discuss with ward and *if* ward does not protest.
- Creates a non-Ch. 51-related process and standard for involuntary administration of psychotropic medication
- An order for involuntary administration of psychotropic medication is a Ch. 55 protective service.
- Standard – Current Ch. 880 standard *or* Ch. 51 standard.



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Act 388 / AB 539



SUMMARY

- Revises chapter 46 governing the reporting of and response to allegations of abuse, self-neglect, neglect and financial exploitation of elders.
- Revises chapter 55 to permit all counties to investigate reports of suspected abuse, self-neglect, neglect and financial exploitation of vulnerable adults ages 18 to 59; currently only Milwaukee County has this authority.



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Act 388 – cont'd



NEW TERMS & DEFINITIONS

- Elder adult at risk
- Adult at risk
- Elder-adult-at-risk agency
- Adult-at-risk agency



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Act 388 – cont'd



REPORTING ABUSE

- Voluntary reporting –
 - An attorney or a person working under the supervision of any attorney may report elder abuse.
- Limited required reporting -
 - An employee of any entity that is licensed, certified, or approved by, or registered with DHFS
 - A health care provider
 - A social worker, professional counselor, or marriage and family therapist



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Act 388 – cont'd



- file a report *if*:
 - The elder adult at risk or adult at risk is seen in the course of the person's professional duties *and*
 - The elder adult at risk or the adult at risk has requested the person to make the report **or**
 - There is reasonable cause to believe that the elder adult-at-risk or adult-at-risk is at imminent risk of serious bodily harm, death, sexual assault, or significant property loss *and* is unable to make an informed judgment about whether to report the risk; **or**



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Act 388 – cont'd



- Other adults-at-risk are at risk of serious bodily harm, death, sexual assault, or significant property loss inflicted by the suspected perpetrator;
- *Unless* the person believes that filing the report would not be in the best interest of the elder adult-at-risk or adult-at-risk and documents the reasons for their belief in the case file of the suspected victim.
- Fine of \$500 / 6 months.



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Act 388 – cont'd



IMMUNITY PROVISIONS

- Apply to new reporters.
- Apply if filed with incorrect agency but good faith belief that filed with the correct department.
- Penalty for retaliating against a reporter increased to \$10,000.
- Rebuttable presumption created that any discharge or act of retaliation or discrimination taken against a reporter within 120 days after the report is made is retaliatory.



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Act 388 – cont'd



INVESTIGATIONS

- Financial records of the elder/adult maintained by:
 - a financial institution
 - regulated facility or entity
 - a caregiver of the elder adult at risk
 - a member of immediate family of the elder adult at risk or caregiver



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Act 388 – cont'd



- Must be released without informed consent
 - Upon request of elder/adult abuse agency
 - Under a court order
- May be released without informed consent
 - Upon the initiative of the record holder
- Elder / adult may be interviewed without permission of guardian or agent.



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