

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

H.P. 699 - L.D. 939

**An Act To Enhance Mandated Reporting and Prosecution of Elder Abuse,
Neglect and Exploitation**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §3472, sub-§6, as amended by PL 2003, c. 653, §2, is further amended to read:

6. Dependent adult. "Dependent adult" means an adult who has a physical or mental condition that substantially impairs the adult's ability to adequately provide for that adult's daily needs. "Dependent adult" includes, but is not limited to, any of the following:

- A. A resident of a nursing home licensed or required to be licensed under section 1817;
- B. A resident of a facility providing assisted living services licensed or required to be licensed pursuant to section 7801; ~~or~~
- C. A person considered a dependent person under Title 17-A, section 555; or
- D. A person, regardless of where that person resides, who is wholly or partially dependent upon one or more other persons for care or support, either emotional or physical, because the person suffers from a significant limitation in mobility, vision, hearing or emotional or mental functioning.

Sec. 2. 22 MRSA §3477, sub-§1, as amended by PL 2007, c. 577, §5, is further amended to read:

1. Report required. The following persons immediately shall report to the department when the person knows or has reasonable cause to suspect that an incapacitated or dependent adult has been or is ~~at substantial risk of abuse, neglect or exploitation~~ likely to be abused, neglected or exploited:

- A. While acting in a professional capacity:
 - (1) An allopathic or osteopathic physician;
 - (2) A medical resident or intern;

- (3) A medical examiner;
- (4) A physician's assistant;
- (5) A dentist, dental hygienist or dental assistant;
- (6) A chiropractor;
- (7) A podiatrist;
- (8) A registered or licensed practical nurse;
- (9) A certified nursing assistant;
- (10) A social worker;
- (11) A psychologist;
- (12) A pharmacist;
- (13) A physical therapist;
- (14) A speech therapist;
- (15) An occupational therapist;
- (16) A mental health professional;
- (17) A law enforcement official, corrections officer or other person holding a certification from the Maine Criminal Justice Academy;
- (18) Emergency room personnel;
- (19) An ambulance attendant;
- (20) An emergency medical technician or other licensed medical service provider;
- (21) Unlicensed assistive personnel;
- (22) A humane agent employed by the Department of Agriculture, Food and Rural Resources;
- (23) A clergy member acquiring the information as a result of clerical professional work except for information received during confidential communications;
- (24) A sexual assault counselor; ~~or~~
- (25) A family or domestic violence victim advocate;
- (26) A naturopathic doctor;
- (27) A respiratory therapist;
- (28) A court-appointed guardian or conservator; or
- (29) A chair of a professional licensing board that has jurisdiction over mandated reporters;

B. Any person who has assumed full, intermittent or occasional responsibility for the care or custody of the incapacitated or dependent adult, regardless of whether the person receives compensation; ~~or~~

C. Any person affiliated with a church or religious institution who serves in an administrative capacity or has otherwise assumed a position of trust or responsibility to the members of that church or religious institution, while acting in that capacity, regardless of whether the person receives compensation; ~~or~~

D. Any person providing transportation services as a volunteer or employee of an agency, business or other entity, whether or not the services are provided for compensation.

The duty to report under this subsection applies to individuals who must report directly to the department. A supervisor or administrator of a person making a report under this section may not impede or inhibit the reporting, and a person making a report may not be subject to any sanction for making a report. Internal procedures to facilitate; reporting consistent with this chapter and to ensure confidentiality of and apprise supervisors and administrators of reports may be established as long as those procedures are ~~not inconsistent~~ consistent with this chapter.

Sec. 3. 22 MRSA §3477, sub-§6 is enacted to read:

6. Photographs of visible trauma. Whenever a person required to report as a staff member of a law enforcement agency or a hospital sees areas of trauma on an incapacitated or dependent adult, that person shall make reasonable efforts to take, or cause to be taken, color photographs of those areas of trauma.

A. The taking of photographs must be done with minimal trauma to the incapacitated or dependent adult and in a manner consistent with professional forensic standards. Consent to the taking of photographs is not required from the adult's legal guardian or by a health care power of attorney.

B. Photographs must be made available to the department as soon as possible. The department shall pay the reasonable costs of the photographs from funds appropriated for adult protective services.

C. The person shall notify the department as soon as possible if that person is unable to take, or cause to be taken, these photographs.

D. Designated agents of the department may take photographs of any subject matter when necessary and relevant to an investigation of a report of suspected abuse, neglect or exploitation or to subsequent adult protection proceedings.

Sec. 4. 22 MRSA §3477, sub-§7 is enacted to read:

7. Information about duty to report. Whenever possible, the department and state licensing boards of professionals required to report under this section shall collaborate to facilitate the dissemination of information regarding the duty to report and the reporting procedure.

Sec. 5. 22 MRSA §3485, as amended by PL 2003, c. 653, §18, is repealed and the following enacted in its place:

§3485. Reporting abuse

1. Immediate report. Subject to the confidentiality provisions of section 3474, subsection 2, paragraph A, when the department receives a report under subchapter 1-A that a person is suspected of abusing, neglecting or exploiting an incapacitated or dependent adult, the department shall immediately report the suspected abuse, neglect or exploitation to the appropriate district attorney's office, whether or not the department investigates the report.

2. After investigation. Upon finding evidence indicating that a person has abused, neglected or exploited an incapacitated or dependent adult, resulting in serious harm, the department shall notify the appropriate district attorney or law enforcement agency of that finding.

In House of Representatives, 2011

Read twice and passed to be enacted.

..... Speaker

In Senate, 2011

Read twice and passed to be enacted.

..... President

Approved 2011

..... Governor