

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

SECOND REGULAR SESSION-2004

Legislative Document

No. 1765

H.P. 1287

House of Representatives, December 22, 2003

An Act To Clarify the Responsibilities under the Adult Protective Services Act

Submitted by the Department of Human Services pursuant to Joint Rule 204.

Received by the Clerk of the House on December 17, 2003. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative NORBERT of Portland.

Cosponsored by Representatives: BULL of Freeport, GERZOFSKY of Brunswick, MILLS of Farmington, Senator: MAYO of Sagadahoc.

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

Sec. 1. 22 MRSA §3472, as amended by PL 2001, c. 354, §3, is further amended to read:

§3472. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Abuse. "Abuse" means the infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting that causes or is likely to cause physical harm or pain or mental anguish; sexual abuse or sexual exploitation; or the willful intentional, knowing or reckless deprivation of essential needs. "Abuse" includes acts and omissions.

2. Adult. "Adult" means any person who has attained the age of 18 years of age or who is a legally emancipated minor.

2-A. Bureau. "Bureau" means the Department of Human Services, Bureau of Elder and Adult Services ~~of the Department of Human Services~~.

3. Caretaker. "Caretaker" means any individual or institution who has or assumes the responsibility for the care of an adult.

4. Commissioner. "Commissioner" means the Commissioner of Human Services or a designated representative in the geographical area in which the person resides or is present or, in the case of ~~mentally---retarded~~ adults with mental retardation, the Commissioner of Behavioral and Developmental Services or a designated representative in the geographical area in which the person resides or is present.

5. Department. "Department" means either the Department of Human Services or, in the case of ~~mentally-retarded~~ adults with mental retardation, the Department of Behavioral and Developmental Services.

6. Dependent adult. "Dependent adult" means ~~any adult who is wholly or partially dependent upon one or more other persons for care or support, either emotional or physical, and who would be in danger if that care or support were withdrawn,~~ 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:

2 A. A resident of a nursing home licensed or required to be
3 licensed under section 1817;

4 B. A resident of a facility providing assisted living
5 services licensed or required to be licensed pursuant to
6 section 7801; or

7 C. A person considered a dependent person under Title 17-A,
8 section 555.

9 **7. Emergency.** "Emergency" refers to a situation where in
10 which:

11 A. The incapacitated or dependent adult is in immediate
12 risk of serious harm;

13 B. The incapacitated or dependent adult is unable to
14 consent to services which that will diminish or eliminate
15 the risk; and

16 C. There is no guardian person legally authorized to
17 consent to emergency services.

18 **8. Emergency services.** "Emergency services" ~~refer~~ refers
19 to those services necessary to avoid serious harm.

20 **9. Exploitation.** "Exploitation" means the illegal or
21 improper use of an incapacitated or dependent adult or his that
22 adult's resources for another's profit or advantage.

23 **10. Incapacitated adult.** "Incapacitated adult" means any
24 adult who is impaired by reason of mental illness, mental
25 deficiency, physical illness or disability to the extent that
26 that individual lacks sufficient understanding or capacity to
27 make or communicate responsible decisions concerning that
28 individual's person, or to the extent the adult ~~cannot~~ can not
29 effectively manage or apply that individual's estate to necessary
30 ends.

31 **11. Neglect.** "Neglect" means a threat to an adult's health
32 or welfare by physical or mental injury or impairment,
33 deprivation of essential needs or lack of protection from these.

34 **12. Protective services.** "Protective services" means
35 services ~~which--will~~ that separate incapacitated or dependent
36 adults from danger. Protective services include, but are not
37 limited to, social, medical and psychiatric services necessary to
38 preserve the incapacitated or dependent adult's rights and
39 resources and to maintain the incapacitated or dependent adult's
40 physical and mental well-being.

2 Protective services may include seeking guardianship or a
protective order under Title 18-A, Article V 5.

4
6 **13. Serious harm.** "Serious harm" means:

8 A. Serious physical injury or impairment;

10 B. Serious mental injury or impairment, ~~which that~~ now or
in the future is likely to be evidenced by serious mental,
12 behavioral or personality disorder, including, but not
14 limited to, severe anxiety, depression or withdrawal,
untoward aggressive behavior or similar serious
dysfunctional behavior; ~~or~~

16 C. Sexual abuse or sexual exploitation; ~~or~~

18 D. Serious waste or dissipation of resources.

20 **15. Sexual abuse or sexual exploitation.** "Sexual abuse or
sexual exploitation" means contact or interaction of a sexual
22 nature involving an incapacitated or dependent adult without that
adult's informed consent.

24
26 **Sec. 2. 22 MRSA §3473, sub-§1, ¶¶A and B,** as amended by PL
1991, c. 711, §2, are further amended to read:

28 A. Protect ~~abused, neglected or exploited~~ incapacitated and
dependent adults from abuse, neglect and exploitation and
30 protect incapacitated and dependent adults in circumstances
which ~~that~~ present a substantial risk of abuse, neglect or
32 exploitation;

34 B. Prevent abuse, neglect or exploitation of incapacitated
and dependent adults;

36
38 **Sec. 3. 22 MRSA §3473, sub-§2, ¶B,** as enacted by PL 1981, c.
527, §2, is amended to read:

40 B. Take appropriate action, including providing or
arranging for the provision of appropriate services and
42 making referrals to law enforcement; and

44 **Sec. 4. 22 MRSA §3473, sub-§3, ¶¶A and B,** as amended by PL
1991, c. 711, §4, are further amended to read:

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48 A. Matters relating to the performance of duties in
uncontested guardianship, or conservatorship or termination
of guardianship or conservatorship proceedings; and
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2 B. Requests for emergency guardianships arising from the
3 need for emergency medical treatment or placement in adult
4 ~~foster--homes,--boarding--homes~~ assisted living programs,
5 residential care facilities or nursing ~~homes~~ facilities or
6 for orders necessary to apply for or preserve an estate in
7 emergency situations.

8 **Sec. 5. 22 MRSA §3474, sub-§2,** as amended by PL 1989, c. 7,
9 Pt. N, §2 and c. 858, §§6 to 8, is further amended to read:
10

11 **2. Optional disclosure of records.** The department may
12 disclose relevant information in the records to the following
13 persons, with protection for the identity of reporters and other
14 persons when appropriate:

15 A. An agency responsible for investigating a report of
16 adult abuse, neglect or exploitation when the investigation
17 is authorized by statute or by an agreement with the
18 department;

19 B. An advocacy agency conducting an investigation under
20 chapter 961, United States Public Law 88-164, Title I, Part
21 C or United States Public Law 99-319, except as provided in
22 subsection 3, paragraph D;

23 C. A physician treating an incapacitated or dependent adult
24 ~~whom-he~~ who the physician reasonably suspects may be abused,
25 neglected or exploited;

26 D. An incapacitated or dependent adult named in a record
27 who is reported to be abused, neglected or exploited, or the
28 caretaker of the incapacitated or dependent adult, ~~--with~~
29 ~~protection-for-identity-of-reporters-and-other-persons-when~~
30 ~~appropriate;~~

31 E. A person having the legal responsibility or
32 authorization to care for, evaluate, treat or supervise an
33 incapacitated or dependent adult;

34 F. Any person engaged in bona fide research, provided that
35 no personally identifying information is made available,
36 unless it is essential to the research and the commissioner
37 or the commissioner's designee gives prior approval. If the
38 researcher desires to contact a subject of a record, the
39 subject's consent must be obtained by the department prior
40 to the contact;

41 G. Persons and organizations pursuant to Title 5, section
42 9057, subsection 6, and pursuant to chapter 857; and
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2 H. A relative by blood, marriage or adoption of an
incapacitated or dependent adult named in a record; and

4 I. A member of a panel appointed by the department or the
6 Office of the Attorney General to review the death or
serious injury of an incapacitated or dependent adult or a
8 child.

10 **Sec. 6. 22 MRSA §3474, sub-§3, ¶B,** as amended by PL 1985, c.
644, §2, is further amended to read:

12 B. A court on its finding that access to those records may
14 be necessary for the determination of any issue before the
court. Access ~~shall~~ must be limited to ~~in camera~~ in camera
16 inspection, unless the court determines that ~~public~~
disclosure of the information is necessary for the
18 resolution of an issue pending before it;

20 **Sec. 7. 22 MRSA §3475,** as amended by PL 1981, c. 705, Pt. E,
§1, is further amended to read:

22 **§3475. Penalty for violations**

24 A person who knowingly violates a provision of this chapter
26 commits a civil violation for which a forfeiture of not more than
\$500 may be adjudged. Any licensed, registered, accredited or
28 certified professional who has been adjudged to have violated a
provision of this chapter ~~shall~~ must, in addition to any
30 financial penalty, be reported by the court or the department to
the appropriate professional licensing organization, registration
board, accrediting unit or facility.

32 **Sec. 8. 22 MRSA §3477, sub-§1,** as amended by PL 2003, c. 145,
34 §1 and c. 210, §§1 and 2, is repealed and the following enacted
in its place:

36 1. Report required. The following persons immediately
38 shall report to the department when the person has reasonable
cause to suspect that an incapacitated or dependent adult has
40 been or is at substantial risk of abuse, neglect or exploitation:

42 A. While acting in a professional capacity:

44 (1) An allopathic or osteopathic physician;

46 (2) A medical intern;

48 (3) A medical examiner;

50 (4) A physician's assistant;

- 2 (5) A dentist;
- 4 (6) A chiropractor;
- 6 (7) A podiatrist;
- 8 (8) A registered or licensed practical nurse;
- 10 (9) A certified nursing assistant;
- 12 (10) A social worker;
- 14 (11) A psychologist;
- 16 (12) A pharmacist;
- 18 (13) A physical therapist;
- 20 (14) A speech therapist;
- 22 (15) An occupational therapist;
- 24 (16) A mental health professional;
- 26 (17) A law enforcement official;
- 28 (18) Emergency room personnel;
- 30 (19) An ambulance attendant;
- 32 (20) An emergency medical technician;
- 34 (21) Unlicensed assistive personnel;
- 36 (22) A humane agent employed by the Department of
38 Agriculture, Food and Rural Resources; or
- 40 (23) A clergy member acquiring the information as a
42 result of clerical professional work except for
44 information received during confidential communications;
- 46 B. Any person who has assumed full, intermittent or
48 occasional responsibility for the care or custody of the
50 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

2 the members of that church or religious institution, while
3 acting in that capacity, regardless of whether the person
4 receives compensation.

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

13 **Sec. 9. 22 MRSA §3477, sub-§2**, as enacted by PL 1981, c. 705,
14 Pt. E, §2, is amended to read:

15 **2. Reports.** Reports regarding abuse, neglect or
16 exploitation shall ~~must~~ be made immediately by telephone to the
17 department and shall ~~must~~ be followed by a written report within
18 48 hours if requested by the department. The reports shall ~~must~~
19 contain the name and address of the involved adult; information
20 regarding the nature and extent of the abuse, neglect or
21 exploitation; the source of the report; the person making the
22 report; ~~his~~ that person's occupation; and where he that person
23 can be contacted. The report may contain any other information
24 ~~which~~ that the reporter believes may be helpful.

25 **Sec. 10. 22 MRSA §3479**, as repealed and replaced by PL 1989,
26 c. 858, §12, is amended to read:

27 **§3479. Optional reporting**

28 Any person may make a report ~~if to the department when that~~
29 ~~person knows-er~~ has reasonable cause to suspect an incapacitated
30 or dependent adult has been or is at substantial risk of abuse,
31 neglect or exploitation of--an--incapacitated--er--dependent--adult,
32 er--has--reasonable--cause--to--suspect--that--an--adult--is
33 ineapacitated.

34 **Sec. 11. 22 MRSA §3479-A, sub-§1**, as enacted by PL 1981, c.
35 705, Pt. E, §2, is amended to read:

36 **1. Reporting and proceedings.** A person participating in
37 good faith in reporting under this subchapter, or in a related
38 adult protection investigation or proceeding, is immune from any
39 civil liability that might otherwise result from these actions,
40 including, but not limited to, any civil liability that might
41 otherwise arise under state or local laws or rules regarding
42 confidentiality of information.

2 **Sec. 12. 22 MRSA §3480, sub-§1, ¶A**, as enacted by PL 1981, c.
527, §2, is amended to read:

4 A. Issue subpoenas requiring persons to disclose or provide
6 to the department information or records in their possession
7 which that are necessary and relevant to an investigation of
8 a report of suspected abuse, neglect or exploitation or to a
9 subsequent adult protective proceeding+, including, but not
10 limited to, health care information that is confidential
11 under section 1711-C.

12 (1) The department may apply to the District Court and
13 Probate Court to enforce a subpoena+-and.

14 (2) A person who complies with a subpoena is immune
15 from civil or criminal liability that might otherwise
16 result from the act of turning over or providing
17 information or records to the department; and

18 **Sec. 13. 22 MRSA §3480-A** is enacted to read:

19 **§3480-A. Privileged or confidential communications**

20 The husband-wife, physician-patient and
21 psychotherapist-patient privileges under the Maine Rules of
22 Evidence and the confidential quality of communications under
23 section 1711-C, Title 24-A, section 4224 and Title 32, sections
24 1092-A and 7005 are abrogated in relation to required reporting,
25 cooperating with the department in an investigation or other
26 protective activity or giving evidence in a protective
27 proceeding. Information released to the department pursuant to
28 this section must be kept confidential and may not be disclosed
29 by the department except as provided in section 3474.

30 A statement made to a licensed mental health professional in
31 the course of counseling, therapy or evaluation in a case in
32 which a privilege is abrogated under this section may not be used
33 against the client in a criminal proceeding except to rebut the
34 client's testimony contradicting that statement. This section
35 does not limit any responsibilities of the professional pursuant
36 to this Act.

37 **Sec. 14. 22 MRSA §3484**, as enacted by PL 1981, c. 527, §2, is
38 amended to read:

39 **§3484. Payment for protective services**

40 At the time the department makes an evaluation of the case
41 reported, it shall must be determined, according to regulations
42 set by the commissioner, whether the incapacitated or dependent

adult is financially capable of paying for the essential services. To the extent that assets are available to the incapacitated or dependent adults,--or--wards adult, ward or protected person, the cost of services shall must be borne by the estate of persons the person receiving those services.

Sec. 15. 22 MRSA §3485, as amended by PL 1995, c. 183, §1, is further amended to read:

§3485. Reporting abuse

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

Sec. 16. 22 MRSA c. 958-A, sub-c. 3, as enacted by PL 1983, c. 575, §1, is repealed.

Sec. 17. 22 MRSA c. 958-A, sub-c. 4 is enacted to read:

SUBCHAPTER 4

RULES

§3493. Rules

The department may adopt rules in accordance with Title 5, chapter 375, subchapter 2-A to carry out this chapter.

Sec. 18. 22 MRSA §5106, sub-§11-B, as enacted by PL 1989, c. 329, §16, is amended to read:

11-B. Adult protective services. Administer a program of protective services as provided in chapter 958-A designed to protect incapacitated and dependent adults, other than adults who are mentally retarded, from abuse, neglect, exploitation and physical danger. The program is described in the Adult Protective Services Act, ~~sections 3471 to 3492;~~

SUMMARY

This bill clarifies the reporting requirements under the Adult Protective Services Act by making the reporting requirements individual to the reporter, similar to the requirements that currently exist for the reporting of abuse, neglect and exploitation in facilities. This bill also clarifies the relationship between the Adult Protective Services Act and

2 other state and local laws regarding confidential or privileged
information and specifies the types of information the department
4 may receive as part of an investigation or protective
proceeding. Some definitions, including the definition of
"dependent adult," have been revised to better reflect the
6 population served by the Adult Protective Services Act.