

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1606

S.P. 560

In Senate, May 7, 2003

An Act To Amend the Adult Protective Services Act

Submitted by the Department of Human Services pursuant to Joint Rule 204.
Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator PENDLETON of Cumberland.
Cosponsored by Representative BRYANT-DESCHENES of Turner and
Representatives: BULL of Freeport, CAMPBELL of Newfield, NORBERT of Portland,
WALCOTT of Lewiston.

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

4 **Sec. 1. 22 MRSA §3471**, as amended by PL 1991, c. 711, §1, is
further amended to read:

6 **§3471. Declaration of policy and legislative intent**

8 The Legislature recognizes that many adult citizens of the
State, because of incapacitation or dependency vulnerability, are
10 unable to manage their own affairs or to protect themselves from
abuse, neglect or exploitation. Often these persons ~~cannot~~ can
12 not find others able or willing to render assistance. The
Legislature intends, through this Act, to establish a program of
14 protective services designed to fill this need and to assure
ensure its availability to all incapacitated and dependent
16 vulnerable adults who are faced with abuse, neglect, exploitation
or the substantial risk of abuse, neglect or exploitation. It is
18 also the intent of the Legislature to authorize only the least
possible restriction on the exercise of personal and civil rights
20 consistent with the person's need for services and to require
that due process be followed in imposing those restrictions.

22 **Sec. 2. 22 MRSA §3472**, as amended by PL 2001, c. 354, §3, is
24 further amended to read:

26 **§3472. Definitions**

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

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

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

40 **2-A. Bureau.** "Bureau" means the Bureau of Elder and Adult
42 Services of the Department of Human Services.

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

48 **4. Commissioner.** "Commissioner" means the Commissioner of
Human Services or a designated representative in the geographical
50 area in which the person resides or is present or, in the case of

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

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

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

14 **7. Emergency.** "Emergency" refers to a situation where in
15 which:

16 A. The incapacitated adult or dependent vulnerable adult is
17 in immediate risk of serious harm;

18 B. The incapacitated adult or dependent vulnerable adult is
19 unable to consent to services which that will diminish or
20 eliminate the risk; and

21 C. There is no guardian person legally authorized to
22 consent to emergency services.

23 **8. Emergency services.** "Emergency services" ~~refer~~ refers
24 to those services necessary to avoid serious harm.

25 **9. Exploitation.** "Exploitation" means the illegal or
26 improper use of an incapacitated adult or dependent a vulnerable
27 adult or his that adult's resources for another's profit or
28 advantage.

29 **10. Incapacitated adult.** "Incapacitated adult" means any
30 adult person who is impaired by reason of mental illness, mental
31 deficiency, physical illness or disability, chronic use of drugs,
32 chronic intoxication or other cause except minority to the extent
33 that that individual person lacks sufficient understanding or
34 capacity to make or communicate responsible decisions concerning
35 that individual's person's person, or to the extent the adult
36 person cannot can not effectively manage or apply that
37 individual's person's estate to necessary ends.

38 **11. Neglect.** "Neglect" means a threat to an adult's health
39 or welfare by physical or mental injury or impairment,
40 deprivation of essential needs or lack of protection from these.
41 "Neglect" includes self-neglect.

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

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

12-A. Self-neglect. "Self-neglect" means neglect that is a result of an incapacitated adult's or vulnerable adult's own actions or failure to perform or obtain services necessary for that adult's care or support.

13. Serious harm. "Serious harm" means:

- A. Serious physical injury or impairment;
- B. Serious mental injury or impairment, ~~--which~~ that now or in the future is likely to be evidenced by serious mental, behavioral or personality disorder, including, but not limited to, severe anxiety, depression or withdrawal, untoward aggressive behavior or similar serious dysfunctional behavior; ~~er~~
- C. Sexual abuse or sexual exploitation; ~~;~~ or
- D. Serious waste or dissipation of resources.

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

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

- A. An incapacitated adult;
- B. A resident of a nursing facility licensed or required to be licensed under section 1817;

2 C. A resident of a facility providing assisted living
3 services licensed or required to be licensed pursuant to
4 section 7801; or

5 D. A person described as a dependent person in Title 17-A,
6 section 555.

7 **Sec. 3. 22 MRSA §3473**, as amended by PL 1991, c. 711, §§2 to
8 4, is further amended to read:

9 **§3473. Authorizations**

10 **1. General.** The department shall act to:

11 A. Protect ~~abused,--neglected--or--exploited~~ incapacitated
12 adults and dependent vulnerable adults from abuse, neglect
13 or exploitation and protect incapacitated adults and
14 dependent vulnerable adults in circumstances which that
15 present a substantial risk of abuse, neglect or
16 exploitation;

17 B. Prevent abuse, neglect or exploitation of incapacitated
18 adults and vulnerable adults;

19 C. Enhance the welfare of these incapacitated adults and
20 dependent vulnerable adults; and

21 D. Promote self-care wherever possible.

22 **2. Reports.** The department shall:

23 A. Receive, promptly investigate and determine the validity
24 of reports of alleged abuse, neglect or exploitation or the
25 substantial risk of abuse, neglect or exploitation;

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

29 C. Petition for guardianship or a protective order under
30 Title 18-A, Article 5, when all less restrictive
31 alternatives have been tried and have failed to protect the
32 incapacitated adult.

33 **3. Appearance of designated employees in Probate Court.**
34 The commissioner may designate employees of the department to
35 represent the department in Probate Court in:

36 A. Matters relating to the performance of duties in
37 uncontested guardianship, or conservatorship or termination
38 of guardianship or conservatorship proceedings; and

2 B. Requests for emergency guardianships arising from the
need for emergency medical treatment or placement in adult
4 ~~foster--homes,--boarding--homes--or--nursing--homes~~ assisted
6 living programs, residential care facilities or nursing
facilities or for orders necessary to apply for or preserve
an estate in emergency situations.

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10 **Sec. 4. 22 MRSA §3474, sub-§2**, as amended by PL 1989, c. 7,
Pt. N, §2 and c. 858, §§6 to 8, is further amended to read:

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

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

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

26 C. A physician treating an incapacitated adult or dependent
28 a vulnerable adult ~~whom--he~~ who the physician reasonably
suspects may be abused, neglected or exploited;

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

36 E. A person having the legal responsibility or
38 authorization to care for, evaluate, treat or supervise an
incapacitated adult or dependent a vulnerable adult;

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

48 G. Persons and organizations pursuant to Title 5, section
50 9057, subsection 6, and pursuant to chapter 857; and

2 H. A relative by blood, marriage or adoption of an
4 incapacitated adult or dependent a vulnerable adult named in
a record; and

6 I. A member of a panel appointed by the department or the
8 Department of the Attorney General to review deaths or
serious injuries of an incapacitated adult or a vulnerable
adult or a child.

10 **Sec. 5. 22 MRSA §3474, sub-§3, ¶A,** as enacted by PL 1981, c.
12 527, §2, is amended to read:

14 A. The guardian ad litem of an incapacitated adult or
16 dependent a vulnerable adult named in a record who is
reported to be abused, neglected or exploited;

18 **Sec. 6. 22 MRSA §3474, sub-§3, ¶B,** as amended by PL 1985, c.
20 644, §2, is further amended to read:

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

28 **Sec. 7. 22 MRSA §3475,** as amended by PL 1981, c. 705, Pt. E,
30 §1, is further amended to read:

32 **§3475. Penalty for violations**

34 A person who knowingly violates a provision of this chapter
36 commits a civil violation for which a forfeiture of not more than
38 \$500 may be adjudged. Any licensed, registered, accredited or
40 certified professional who has been adjudged to have violated a
provision of this chapter shall must, in addition to any
financial penalty, be reported by the court or the department to
the appropriate professional licensing, registration board,
accrediting unit or facility.

42 **Sec. 8. 22 MRSA §3476,** as enacted by PL 1981, c. 527, §2, is
44 amended to read:

46 **§3476. Spiritual treatment**

48 **1. Treatment not considered abuse, neglect or exploitation.**
An incapacitated adult or dependent a vulnerable adult shall may
not be considered to be abused, neglected or exploited solely

2 because treatment is by spiritual means by an accredited
practitioner of a recognized religious organization.

4 **2. Treatment to be considered if requested.** When medical
treatment is authorized, under this chapter, treatment by
6 spiritual means by an accredited practitioner of a recognized
religious organization may also be considered if requested by the
8 incapacitated adult or disabled vulnerable adult or his that
adult's caretaker.

10 **Sec. 9. 22 MRSA §3477, sub-§1**, as repealed and replaced by PL
12 2001, c. 345, §3, is amended to read:

14 **1. Report required.** The following persons immediately
shall report ~~or cause a report to be made~~ to the department when
16 the person suspects ~~that an adult has been abused, neglected or~~
~~exploited and~~ has reasonable cause to suspect that ~~the adult is~~
18 incapacitated or dependent an incapacitated adult or a vulnerable
adult has been or is at substantial risk of abuse, neglect or
20 exploitation:

22 A. While acting in a professional capacity:

- 24 (1) An allopathic or osteopathic physician;
- 26 (2) A medical intern;
- 28 (3) A medical examiner;
- 30 (4) A physician's assistant;
- 32 (5) A dentist;
- 34 (6) A chiropractor;
- 36 (7) A podiatrist;
- 38 (8) A registered or licensed practical nurse;
- 40 (9) A certified nursing assistant;
- 42 (10) A social worker;
- 44 (11) A psychologist;
- 46 (12) A pharmacist;
- 48 (13) A physical therapist;
- 50 (14) A speech therapist;

- 2 (15) An occupational therapist;
- 4 (16) A mental health professional;
- 6 (17) A law enforcement official;
- 8 ~~(18) A coroner;~~
- 10 (19) Emergency room personnel;
- 12 (20) An ambulance attendant;
- 14 (21) An emergency medical technician; or
- 16 (22) Unlicensed assistive personnel; or

18 B. Any other person who has assumed full, intermittent or
20 occasional responsibility for the care or custody of the
adult, whether or not the person receives compensation.

22 ~~Whenever a person is required to report as a member of the staff
24 of a medical, public or private institution, agency or facility,
the staff person immediately shall make a report directly to the
26 department.~~

28 The duty to report under this section is individual. A
30 supervisor or administrator of a person making a report under
32 this section may not impede or inhibit the reporting, and a
34 person making a report may not be subject to any sanction for
making a report. Internal procedures to facilitate, ensure
confidentiality of and apprise supervisors and administrators of
reports may be established, provided those procedures are not
inconsistent with this chapter.

36 **Sec. 10. 22 MRSA §3477, sub-§2**, as enacted by PL 1981, c. 705,
38 Pt. E, §2, is amended to read:

40 **2. Reports.** Reports regarding abuse, neglect or
42 exploitation shall must be made immediately by telephone to the
44 department and shall must be followed by a written report within
46 48 hours if requested by the department. The reports shall must
48 contain the name and address of the involved adult; information
regarding the nature and extent of the abuse, neglect or
exploitation; the source of the report; the person making the
report; his that person's occupation; and where he that person
can be contacted. The report may contain any other information
which the reporter believes may be helpful.

2 **Sec. 11. 22 MRSA §3479**, as repealed and replaced by PL 1989,
c. 858, §12, is amended to read:

4 **§3479. Optional reporting**

6 Any person may make a report ~~if to the department when~~ that
7 person ~~knows or~~ has reasonable cause to suspect an incapacitated
8 adult or vulnerable adult has been or is at substantial risk of
9 abuse, neglect or exploitation of an incapacitated or dependent
10 adult, or has reasonable cause to suspect that an adult is
11 incapacitated.

12 **Sec. 12. 22 MRSA §3479-A, sub-§1**, as enacted by PL 1981, c.
13 705, Pt. E, §2, is amended to read:

14 **1. Reporting and proceedings.** A person participating in
15 good faith in reporting under this subchapter, or in a related
16 adult protection investigation or proceeding, is immune from any
17 civil liability that might otherwise result from these actions,
18 including, but not limited to, any civil liability that might
19 otherwise arise under other state or local laws or rules
20 regarding confidentiality of information.

21 **Sec. 13. 22 MRSA §3480, sub-§1, ¶A**, as enacted by PL 1981, c.
22 527, §2, is amended to read:

23 A. Issue subpoenas requiring persons to disclose or provide
24 to the department information or records in their possession
25 which that are necessary and relevant to an investigation of
26 a report of suspected abuse, neglect or exploitation or to a
27 subsequent adult protective proceeding, including, but not
28 limited to, health care information that is confidential
29 under section 1711-C;

30 (1) The department may apply to the District Court and
31 Probate Court to enforce a subpoena; and

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

36 **Sec. 14. 22 MRSA §3480-A** is enacted to read:

37 **§3480-A. Privileged or confidential communications**

38 The husband-wife, physician-patient and
39 psychotherapist-patient privileges under the Maine Rules of
40 Evidence and the confidential quality of communications under
41 Title 22, section 1711; Title 24-A, section 4224; and Title 32,
42 sections 1092-A and 7005, are abrogated in relation to required

2 reporting, cooperating with the department in an investigation or
3 other protective activity or giving evidence in a protective
4 proceeding. Information released to the department pursuant to
5 this section must be kept confidential and may not be disclosed
6 by the department except as provided in section 3474.

7
8 A statement made to a licensed mental health professional in
9 the course of counseling, therapy or evaluation in a case in
10 which a privilege is abrogated under this section may not be used
11 against the client in a criminal proceeding except to rebut the
12 client's testimony contradicting that statement. Nothing in this
13 section may limit any responsibilities of the professional
14 pursuant to this Act.

15 **Sec. 15. 22 MRSA §3481, first ¶,** as enacted by PL 1981, c. 527,
16 §2, is amended to read:

17 When it has been determined that an incapacitated adult or
18 dependent a vulnerable adult is in need of protective services,
19 the department shall immediately provide or arrange for
20 protective services, provided that the adult consents.
21

22 **Sec. 16. 22 MRSA §3481, sub-§1,** as enacted by PL 1981, c. 527,
23 §2, is amended to read:

24
25 1. **Consent.** If an incapacitated adult or dependent a
26 vulnerable adult does not consent to the receipt of protective
27 services, or if he that adult withdraws consent, the service
28 shall may not be provided.
29

30 **Sec. 17. 22 MRSA §3484,** as enacted by PL 1981, c. 527, §2, is
31 amended to read:

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33 **§3484. Payment for protective services**

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35 At the time the department makes an evaluation of the case
36 reported, it shall must be determined, according to regulations
37 set by the commissioner, whether the incapacitated adult or
38 dependent vulnerable adult is financially capable of paying for
39 the essential services. To the extent that assets are available
40 to the incapacitated adult or dependent-adults vulnerable adult,
41 or-wards ward or protected person, the cost of services shall
42 must be borne by the estate of persons a person receiving those
43 services.
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45 **Sec. 18. 22 MRSA §3485,** as amended by PL 1995, c. 183, §1, is
46 further amended to read:

47 **§3485. Reporting abuse**

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

8 **Sec. 19. 22 MRSA §3486**, as enacted by PL 1981, c. 527, §2, is
amended to read:

10 **§3486. Cooperation**

12 All other state and local agencies as well as private
agencies receiving public funds shall cooperate with the
14 department in rendering protective services on behalf of
incapacitated adults and dependent vulnerable adults.
16

18 **Sec. 20. 22 MRSA c. 958-A, sub-c. 3** is amended by repealing the
subchapter headnote and enacting the following in its place:

20 **SUBCHAPTER 3**

22 **RULES**

24 **Sec. 21. 22 MRSA §§3488 to 3491**, as enacted by PL 1983, c.
575, §1, are repealed.
26

28 **SUMMARY**

30 This bill makes the reporting requirements under the Adult
Protective Services Act individual to the reporter. This bill
32 also clarifies the relationship between the Adult Protective
Services Act and other state and local laws regarding
34 confidential or privileged information and specifies types of
information the Department of Human Services may receive as part
36 of an investigation or protective proceeding. The term
"dependent adult" has been replaced throughout the Adult
38 Protective Services Act by the term "vulnerable adult."