

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 939

H.P. 699

House of Representatives, March 8, 2011

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

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative NASS of Acton.
Cosponsored by Senator SHERMAN of Aroostook and
Representatives: BEAULIEU of Auburn, KNIGHT of Livermore Falls, VALENTINO of Saco,
Senator: PLOWMAN of Penobscot.

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

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

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

8 A. A resident of a nursing home licensed or required to be licensed under section
9 1817;

10 B. A resident of a facility providing assisted living services licensed or required to
11 be licensed pursuant to section 7801; ~~or~~

12 C. A person considered a dependent person under Title 17-A, section 555-~~;~~ or

13 D. A person, regardless of where that person resides, who is wholly or partially
14 dependent upon one or more other persons for care or support, either emotional or
15 physical, because the person suffers from a significant limitation in mobility, vision,
16 hearing or emotional or mental functioning.

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

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

23 A. While acting in a professional capacity:

24 (1) An allopathic or osteopathic physician;

25 (2) A medical resident or intern;

26 (3) A medical examiner;

27 (4) A physician's assistant;

28 (5) A dentist, dental hygienist or dental assistant;

29 (6) A chiropractor;

30 (7) A podiatrist;

31 (8) A registered or licensed practical nurse;

32 (9) A certified nursing assistant;

33 (10) A social worker;

34 (11) A psychologist;

35 (12) A pharmacist;

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

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

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

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

35 The duty to report under this subsection applies to individuals who must report directly to
 36 the department. A supervisor or administrator of a person making a report under this
 37 section may not impede or inhibit the reporting, and a person making a report may not be
 38 subject to any sanction for making a report. Internal procedures to facilitate; reporting

1 consistent with this chapter and to ensure confidentiality of and apprise supervisors and
2 administrators of reports may be established as long as those procedures are not
3 inconsistent consistent with this chapter.

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

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

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

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

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

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

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

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

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

28 **§3485. Reporting abuse**

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

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

1

SUMMARY

2 This bill modifies several provisions in the Adult Protective Services Act mandated
3 reporting requirements to be consistent with the Child and Family Services and Child
4 Protection Act mandated reporting requirements. Specifically, when a report must be
5 made and by whom have been brought into alignment as appropriate. In addition, several
6 provisions have been added to enhance prosecution of elder abuse, neglect and
7 exploitation, including requirements that photographic evidence of abuse be secured
8 when possible in relation to an incapacitated or dependent adult and that the Department
9 of Health and Human Services notify the district attorney when it receives a report of
10 suspected abuse, neglect or exploitation. The bill also clarifies that "dependent adults"
11 includes adults who are not institutionalized but who are dependent upon others for their
12 day-to-day care. Finally, the bill proposes to increase the penalty a court may impose for
13 a person's failure to report elder abuse, neglect or exploitation as required under the Adult
14 Protective Services Act.