
By Mr. King, a petition (accompanied by bill, Senate, No. 653) of John G. King, Jack H. Backman, Joseph F. Timilty, F. John Monahan and Philip L. Shea for legislation to provide further protection of elderly persons in the Commonwealth. Human Services and Elderly Affairs.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-two.

**AN ACT TO PROVIDE FURTHER PROTECTION OF ELDERLY PERSONS
IN THE COMMUNITY.**

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. Chapter 19A, as most recently amended by sec-
2 tion 63 of Chapter 393 of the acts of 1979, is hereby amend-
3 ed by inserting after section 13 the following: —
- 4 *Section 14.* For the purposes of sections 14-27, the following
5 words and terms shall, unless the context otherwise requires,
6 have the following meaning: —
- 7 “abandonment,” desertion by a caretaker or other person
8 with an obligation to provide services;
- 9 “abuse,” the infliction of physical pain, injury or harm,
10 mental anguish or harm, or unreasonable confinement;
- 11 “caretaker,” the person or persons with the responsibility
12 for the care of an elderly person. The responsibility may
13 arise as the result of a family relationship, or by the voluntary
14 or contractual duty undertaken on behalf of an elderly per-
15 son, or by a fiduciary duty imposed by law.
- 16 “elderly person,” an individual who is sixty years of age
17 or over;
- 18 “emergency,” a situation in which an elderly person is
19 living in conditions which present a substantial risk of death
20 or immediate and serious physical or mental harm;
- 21 “exploitation,” an act or course of conduct to influence or
22 interfere by misrepresentation, coercion or threats of force
23 whether for monetary, personal, or other benefit, gain or
24 profit;

25 "neglect," failure or refusal to provide treatment or serv-
26 ices necessary to maintain physical or mental health;

27 "protective service," services which are necessary to pre-
28 vent abuse, neglect, exploitation or abandonment.

29 *Section 15.* (a) Any physician, medical intern, medical ex-
30 aminer, dentist, nurse, family counselor, probation officer,
31 social worker, policeman, licensed psychologist, coroner, reg-
32 istered physical therapist, registered occupational therapist,
33 osteopath, podiatrist, executive director of home care cor-
34 poration, executive director of licensed home health aide
35 agency or executive director of homemaker service agency
36 who has reasonable cause to believe that an elderly person is
37 suffering from or has died as result of abuse, neglect, abandon-
38 ment, or exploitation shall immediately make a verbal report
39 of such information or cause a report to be made to the de-
40 partment, and shall within forty-eight hours make a written
41 report to the department. The department may bring a com-
42 plaint in district court for the area in which the elderly per-
43 son resides against any person so required to make such re-
44 port who fails to do so. Any person so required to make such
45 report who fails to do so shall be punished by a fine of not
46 more than one thousand dollars.

47 (b) The executive director of a home care corporation,
48 licensed home health agency or homemaker service agency
49 shall establish procedures within such agency to ensure that
50 homemakers, home health aides, case managers or other staff
51 of said agency who have reasonable cause to believe that an
52 elderly person has been abused, neglected, abandoned or ex-
53 ploited shall report such case to the executive director of the
54 corporation or agency. The executive director shall im-
55 mediately make a verbal report of such information or cause
56 a report to be made to the department, and shall within
57 forty-eight hours make a written report to the department.

58 (c) In addition to those persons required to report pur-
59 suant to this section, any other person *may* make such a re-
60 port to the department, if any such person has reasonable
61 cause to believe that an elderly person is suffering from or
62 has died as a result of abuse, neglect, abandonment or ex-
63 ploitation.

64 (d) No person so required to report pursuant to subsec-
65 tion (a) shall be liable in any civil or criminal action by rea-
66 son of such report. No other person making such a report
67 pursuant to subsection (b) or (c) shall be liable in any civil
68 or criminal action by reason of such report if it was made in
69 good faith. No employer or supervisor may discharge; de-
70 mote; transfer, reduce pay, benefits or work privileges; pre-
71 pare a negative work performance evaluation; or take any
72 other action detrimental to an employee or supervisee who
73 files a report in accordance with this section by reason of such
74 report.

75 (e) Reports made pursuant to subsections (a) and (b) shall
76 contain the name, address and approximate age of the elderly
77 person who is the subject of the report; information regard-
78 ing the nature and extent of the abuse, neglect, exploitation,
79 or abandonment; the name of the person's caretaker, if
80 known; any medical treatment being received or immediately
81 required, if known; any other information the reporter be-
82 lieves to be relevant to the investigation; and the name and
83 address of the reporter and where said reporter may be con-
84 tacted, if the reporter wishes to provide said information. The
85 department shall widely publicize the provisions of this sec-
86 tion and the process by which reports of abuse, neglect, ex-
87 ploitation or abandonment shall be made.

88 *Section 16.* The department shall establish a system for
89 the receipt of reports made pursuant to section 15 which shall
90 operate and be accessible on a twenty-four hour pay per day
91 basis. If the department has reasonable cause to believe that
92 an elderly person has died as a result of abuse, neglect, aban-
93 donment or exploitation, he or she shall immediately report
94 such death to the district attorney of the county in which
95 the elderly person resided. Within forty-five days of the re-
96 ceipt of a report made pursuant to section 15(a) the depart-
97 ment or the designated agency shall notify the reporter, in
98 writing, of its response to the report. Such notification shall
99 be made to a person who makes a report pursuant to section
100 15(c) if said reporter so requests.

101 *Section 17.* Whenever deemed necessary and appropriate,
102 the department shall designate at least one local agency to

103 act on behalf of the department within a geographic area as
104 defined by the department. The department may designate
105 any public agency or private non-profit organization which
106 has the capacity to implement a service plan through direct
107 access to social, health and mental health services. The de-
108 partment shall insure that, whenever deemed necessary and
109 appropriate, assessment, evaluation and service delivery shall
110 be provided through the designated local agency closest to
111 the elderly person's community.

112 In designating agencies the department shall insure that:
113 1) persons conducting assessment, evaluation and services
114 delivery have demonstrated experience in providing protec-
115 tive and other social and health services to elders, have these
116 protective functions as their primary employment responsibil-
117 ity, and have other professional qualifications as determined
118 by the secretary; 2) continuity of care under one protective
119 services worker is assured throughout assessment, evaluation
120 and services delivery to the extent possible; 3) the depart-
121 ment and its designated agencies, through their combined ef-
122 forts, has the capacity to conduct an assessment and evalua-
123 tion twelve hours per day, seven days per week, and whenever
124 possible to provide and arrange for protective services at least
125 twelve hours per day, seven days per week. The department
126 shall monitor assessments, evaluations, and the provision of
127 protective services by designated local agencies.

128 *Section 18.* The department or the designated agency shall
129 assess and evaluate the information reported pursuant to sec-
130 tion 15.

131 The assessment shall include a visit to the residence of the
132 elderly person who is the subject of the report and may in-
133 clude consultations with appropriate service agencies and in-
134 dividuals who have knowledge of the elderly person's situa-
135 tion including the person filing the report. The elderly per-
136 son who is the subject of the report shall receive written no-
137 tice that an assessment is being conducted and shall have the
138 right to review the file and report developed as a result of the
139 assessment.

140 If the assessment results in a determination that the elderly
141 person is suffering from abuse, neglect, exploitation or aban-

142 donment, the department or the designated agency shall eval-
143 uate the elderly person's functional capacity, situation, and
144 resources and shall develop a service plan for the provision
145 of protective services. Said plan shall be appropriate to the
146 needs of the elderly person and shall utilize the least restric-
147 tive alternatives.

148 The department shall adopt rules and regulations establish-
149 ing time limits for the completion of assessments and evalua-
150 tions and for the implementation of service plans; provided
151 that if an emergency exists, assessments shall be completed
152 within twenty-four hours of the completion of the assess-
153 ments.

154 If an assessment results in a determination that the elderly
155 person has suffered serious abuse, neglect, exploitation or
156 abandonment, the department or designated agency shall re-
157 port such determination to the district attorney of the district
158 within which the elderly person resides within forty-eight
159 hours. The district attorney may investigate and decide
160 whether to initiate criminal proceedings.

161 *Section 19.* The department or the designated agency shall
162 provide protective services in accordance with the service
163 plan developed pursuant to section 18. Protective services
164 shall include but shall not be limited to the following: home-
165 maker, home-health aide, transportation, legal assistance,
166 counseling and nutrition services.

167 The department or the designated agency is authorized to
168 provide and/or arrange for additional services as may be
169 necessary to assist and protect elderly persons who have been
170 abused, neglected, abandoned, or exploited, including but not
171 limited to the following: emergency housing, medical care,
172 mental health care, emergency financial assistance, foster
173 care and adult day care services.

174 If an elderly person does not consent to the provision of
175 protective services or withdraws such consent, such services
176 shall not be provided or continued. If the department or the
177 designated agency has reason to believe that an elderly per-
178 son lacks capacity to give such consent, it may file a petition
179 in probate court for the reasons set forth in and in accordance
180 with section 21.

181 If the caretaker of an elderly person denies or obstructs
182 access to the residence of the elderly person to the persons
183 conducting an assessment or evaluation pursuant to section
184 18 or obstructs the provision of protective services to an el-
185 derly person who has consented to such services, the depart-
186 ment or designated agency may petition the district, probate
187 or superior court requesting an order which enjoins the care-
188 taker from so obstructing said assessment, evaluation, or the
189 provision of protective services.

190 *Section 20.* The department shall initiate a review of each
191 case within two months of the implementation of the service
192 plan to determine whether continuation or modification of the
193 services provided is warranted. The department shall insure
194 that elderly persons receiving protective services under a
195 service plan implemented by the agency are able to continue
196 to receive maintenance services if protective services are no
197 longer necessary, if those persons are eligible for maintenance
198 services and are in need of those services. The department
199 shall insure that elderly persons have the same rights to ap-
200 peal any denial, reduction, suspension, or termination of serv-
201 ices; as well as delays in implementing the service plan or
202 failure to implement the least restrictive alternative as are
203 insured by the department for other services which it pro-
204 vides.

205 *Section 21.* (a) If the department or the designated agency
206 has reasonable cause to believe that an elderly person is suf-
207 fering from abuse, neglect, exploitation, or abandonment and
208 lacks the capacity to consent to the provision of protective
209 services, the department or the designated agency may peti-
210 tion the probate court for a finding that the elderly person
211 is incapable of consenting to the provisions of protective serv-
212 ices. Said petition shall set forth the specific facts upon which
213 the department or the designated local agency relied in mak-
214 ing the determination. The court shall hold a hearing on the
215 matter within 14 days of the filing of the petition. The court
216 shall give notice to the elderly person who is the subject of
217 the petition at least five days prior to the date set for the
218 hearing. The elderly person who is the subject of the petition

219 shall have the right to be present; be represented by counsel;
220 present evidence; and examine and cross-examine witnesses.
221 If the elderly person who is the subject of the petition is in-
222 digent, the court shall appoint counsel to represent him. If
223 the court determines that the elderly person lacks the capacity
224 to waive the right to counsel, the court shall appoint a guard-
225 ian ad litem to represent the interests of the individual. If, after
226 the hearing, the court determines, based upon clear and con-
227 vincing evidence, that the elderly person has been abused, ne-
228 glected, exploited, or abandoned, is in need of protective serv-
229 ices and lacks the capacity to consent and no other person who
230 is authorized to consent is available or willing to consent, the
231 court may appoint a conservator, guardian, or other person au-
232 thorized to consent to the provision of protective services, pro-
233 vided that the court shall establish the least restrictive form of
234 fiduciary representation that will satisfy the needs of the el-
235 derly person. In addition or in the alternative, the court may
236 issue an order requiring the provision of services. The order
237 shall contain a specific description of the services to be provid-
238 ed and insure that the least restrictive alternatives are utilized.

239 (b) If an emergency exists and the department or the
240 designated agency has reasonable cause to believe that an
241 elderly person is suffering from abuse, neglect, exploitation
242 or abandonment and lacks the capacity to consent to the pro-
243 vision of protective services, the department or the designated
244 agency may petition the probate court for an emergency or-
245 der of protective services. The court shall give notice to the
246 elderly person who is the subject of the petition at least
247 twenty-four hours prior to the hearing, provided that the
248 court may dispense with notice upon finding that immediate
249 and reasonable foreseeable physical harm to the individual or
250 others will result from the twenty-four hour delay and that
251 reasonable attempts have been made to give such notice. If
252 after the hearing, the court determines, based on clear and
253 convincing evidence that the elderly person has been or is
254 being abused, neglected, or exploited; that an emergency ex-
255 ists; that the elderly person lacks the capacity to consent to
256 the provision of services, the court may order the provision

257 of protective services on an emergency basis. The court shall
258 order only those services necessary to remove the conditions
259 creating the emergency and shall specifically designate the
260 authorized services in its order. The order for emergency pro-
261 tective services shall remain in effect for a period not to ex-
262 ceed seventy-two hours provided that said order may be ex-
263 tended for an additional seventy-two hour period if the court
264 finds that the extension is necessary to remove the emer-
265 gency.

266 (c) The court shall not order an institutional placement or
267 change of residence unless it finds that no less restrictive al-
268 ternative will meet the needs of the elderly person. No elderly
269 person may be committed to a mental health facility pursuant
270 to this chapter. The elderly person or his or her court-ap-
271 pointed representative; the department, or the designated
272 agency may petition to have any order issued pursuant to
273 subsections (a) or (b) set aside or modified at any time.

274 *Section 22.* The department shall establish, by regulation,
275 financial eligibility guidelines which provide a procedure for
276 reimbursement by elderly persons for all or part of cost of
277 protective services. If the department or the designated agen-
278 cy determines, pursuant to section 18, that an elderly person
279 who is in need of protective services has sufficient resources to
280 pay for part or all of the cost of protective services, it shall
281 initiate said procedures for reimbursement. If the department
282 or designated agency determines that an elderly person does
283 not have sufficient resources, no reimbursement for any such
284 costs shall be charged to the elderly person.

285 No elderly person shall be required to reimburse the de-
286 partment for part or all of the cost of protective services un-
287 less he or she has been notified prior to the commencement
288 of service provision that a reimbursement will be charged.
289 No elderly person shall be required to reimburse the de-
290 part for protective services before service provision com-
291 mences.

292 *Section 23.* (a) Except as modified herein, all records con-
293 taining personal data which are created, collected, used, main-
294 tained or disseminated pursuant to this chapter shall not be

295 public records, and all dealing with them shall be governed by
296 the provisions of chapter 66A, the notice provisions of section
297 63 of chapter thirty and the enforcement provisions of section
298 three B of chapter two hundred and fourteen.

299 (b) For purposes of the application of subsection two (h)
300 and two (l) of said chapter 66A, if the department, any desig-
301 nated agency, or any other agency obligated to make an as-
302 sessment under this chapter determines that the allegations
303 in a report cannot be substantiated, it shall within three
304 months of such determination, either (i) destroy said report
305 and any other records containing personal data created be-
306 cause of the receipt of said report or (ii) physically remove
307 therefrom all personal identifiers; provided, however, that the
308 department, the designated agency or any other agency ob-
309 ligated to make assessments may create and hold whatever
310 statistical records it needs for purposes of planning and re-
311 porting, as may be prescribed by regulations adopted by the
312 department pursuant to section 2 of chapter 30. Each govern-
313 ment agency shall promulgate regulations prescribing the
314 manner of creating and holding its own such statistical rec-
315 ords, and the department shall adopt such regulations for it-
316 self and any designated agency.

317 (c) For purposes of the application of subsection two (i)
318 of said chapter sixty-six A, the word "prohibited" in the first
319 sentence shall be construed to mean "excused" and the phrase
320 "employee of government" in the fourth sentence shall be
321 construed to mean "employee of government or of a non-gov-
322 ernmental agency obligated to make an assessment." Further,
323 a holder under this chapter shall not reveal to a data subject
324 the identity of any person or persons who have made such
325 report in good faith.

326 (d) For purposes of the application of section three B of
327 chapter two hundred and fourteen a defendant in any action
328 brought thereunder may include, in addition to any holder
329 who violates the provisions of chapter sixty-six A, as modi-
330 fied by this section, an individual who is an employee or agent
331 of a holder and who violates any such provision. Further, any
332 holder or employee or agent thereof who violates such pro-

333 vision may be subjected to administrative disciplinary action
334 pursuant to regulations adopted by the department pursuant
335 to section two of chapter thirty A. Further any such holder
336 or employee shall be punished by a fine of not more than five
337 hundred dollars, or, if harm shall have resulted to anyone
338 whose privacy was sought to be protected by the provision vio-
339 lated, by a fine of not more than one thousand dollars.

340 *Section 24.* Within 120 days following the end of each fis-
341 cal year, the department shall submit a report to the gover-
342 nor, the general court and the public which shall include a
343 description of the activities of the department and all desig-
344 nated agencies pursuant to sections 14 through 27 of this act,
345 during the preceding fiscal year. Said report shall contain
346 statistical information about the number and types of re-
347 ports received under section 15, the results of the assessments
348 and evaluations conducted under section 18 and the amount,
349 type and costs of services provided under section 19 and the
350 report shall also provide information on the quality of serv-
351 ices provided the results of such services in terms of alleviat-
352 ing abuse, neglect, exploitation and abandonment, and shall
353 identify problems that may arise in the implementation of
354 this act. The report shall contain the recommendations of the
355 department for action on the part of the legislature.

356 *Section 25.* The secretary shall adopt and from time to time
357 revise rules and regulations for the implementation of the
358 provisions of sections 15 through 24.

359 *Section 26.* Nothing in this act shall be construed to be a
360 limitation of the powers and responsibilities assigned by law
361 to other departments or agencies.

362 *Section 27.* The department shall implement the provisions
363 of sections 14 through 27 by July 1, 1982.

1 SECTION 2. Section 72E of chapter 111 of the General Laws,
2 as most recently amended by section 2 of chapter 877 of the
3 acts of 1975, is hereby further amended by adding at the end
4 thereof the following: — the department may seek civil rem-
5 edies in superior court for equitable relief to prevent abuse,
6 neglect, or mistreatment of adult residents of long term care
7 facilities.

1 SECTION 3. If any section, subsection, paragraph, sentence
2 or other part of this act is adjudged to be unconstitutional or
3 invalid, such judgment shall not affect, impair or invalidate
4 the remainder of this act, but shall be confined in its effect to
5 the section, subsection, paragraph, sentence or other part di-
6 rectly involved in the controversy in which said judgment
7 shall have been rendered.

