

**HOUSE . . . . . No. 339**

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The Commonwealth of Massachusetts

PRESENTED BY:

*Tackey Chan*

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to mandatory reporting of elder abuse.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Tackey Chan</i>	<i>2nd Norfolk</i>	<i>1/10/2017</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	
<i>F. Jay Barrows</i>	<i>1st Bristol</i>	
<i>James R. Miceli</i>	<i>19th Middlesex</i>	
<i>Shawn Dooley</i>	<i>9th Norfolk</i>	
<i>Carole A. Fiola</i>	<i>6th Bristol</i>	
<i>Steven S. Howitt</i>	<i>4th Bristol</i>	
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>	
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	
<i>James M. Murphy</i>	<i>4th Norfolk</i>	
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>	
<i>Chris Walsh</i>	<i>6th Middlesex</i>	
<i>Paul McMurtry</i>	<i>11th Norfolk</i>	

**HOUSE . . . . . No. 339**

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By Mr. Chan of Quincy, a petition (accompanied by bill, House, No. 339) of Tackey Chan and others relative to mandated reporting of elder abuse. Elder Affairs.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 517 OF 2015-2016.]

The Commonwealth of Massachusetts

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In the One Hundred and Ninetieth General Court  
(2017-2018)  
\_\_\_\_\_

An Act relative to mandatory reporting of elder abuse.

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

1 The General Laws is hereby amended by inserting after Chapter 119A the following new

2 Chapter –

3 Chapter 119B. Protection and Care of Elders

4 Section 1. Definitions

5 “Department” shall mean the Executive Office of Elder Affairs

6 “Elder” Persons over the age of 60.

7 "Mandated reporter", a person who is: (i) a physician, medical intern, hospital personnel

8 engaged in the examination, care or treatment of persons, medical examiner, psychologist,

9 emergency medical technician, dentist, nurse, chiropractor, podiatrist, optometrist, osteopath,

10 allied mental health and human services professional licensed under section 165 of chapter 112,  
11 drug and alcoholism counselor, psychiatrist or clinical social worker; (ii) teacher in a public or  
12 private facility, educational administrator, guidance or family counselor, elder care worker,  
13 person paid to care for or work with a elders any public or private facility, or home or program  
14 funded or licensed by the commonwealth that provides elder care or residential services to elders  
15 or that provides the services of elder care resource and referral agencies, voucher management  
16 agencies or family elder care systems or food programs; (iii) a probation officer, clerk-magistrate  
17 of a district court, parole officer, social worker, foster parent, firefighter, police officer; (iv) a  
18 priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious  
19 body, accredited Christian Science practitioner, person performing official duties on behalf of a  
20 church or religious body that are recognized as the duties of a priest, rabbi, clergy, ordained or  
21 licensed minister, leader of any church or religious body, accredited Christian Science  
22 practitioner, or person employed by a church or religious body to supervise, educate, coach, train  
23 or counsel a elder on a regular basis; (v) in charge of a medical or other public or private  
24 institution, school or facility or that person's designated agent; or (vi) the elder care advocate.

25           Section 2. (a) A mandated reporter who, in his professional capacity, has reasonable  
26 cause to believe that an elder is suffering physical or emotional injury resulting from: (i) abuse  
27 inflicted upon him which causes harm or substantial risk of harm to the elder's health or welfare,  
28 including sexual abuse; (ii) neglect, including malnutrition; shall immediately communicate with  
29 the department orally and, within 48 hours, shall file a written report with the department  
30 detailing the suspected abuse or neglect; or (iv) being a sexually exploited elder; or (v) being a  
31 human trafficking victim as defined by section 20M of chapter 233.

32           If a mandated reporter is a member of the staff of a medical or other public or private  
33 institution, school or facility, the mandated reporter may instead notify the person or designated  
34 agent in charge of such institution, school or facility who shall become responsible for notifying  
35 the department in the manner required by this section.

36           A mandated reporter may, in addition to filing a report under this section, contact local  
37 law enforcement authorities or the elder care advocate about the suspected abuse or neglect.

38           (b) For the purpose of reporting under this section, hospital personnel may have  
39 photographs taken of the areas of trauma visible on the elder without the consent of the elder's  
40 guardians. These photographs or copies thereof shall be sent to the department with the report.

41           If hospital personnel collect physical evidence of abuse or neglect of the elder, the local  
42 district attorney, local law enforcement authorities, and the department shall be immediately  
43 notified.

44           (c) Notwithstanding subsection (g), whoever violates this section shall be punished by a  
45 fine of not more than \$1,000. Whoever knowingly and willfully files a frivolous report of elder  
46 abuse or neglect under this section shall be punished by: (i) a fine of not more than \$2,000 for the  
47 first offense; (ii) imprisonment in a house of correction for not more than 6 months and a fine of  
48 not more than \$2,000 for the second offense; and (iii) imprisonment in a house of correction for  
49 not more than 2 1/2 years and a fine of not more than \$2,000 for the third and subsequent  
50 offenses.

51           Any mandated reporter who has knowledge of elder abuse or neglect that resulted in  
52 serious bodily injury to or death of a elder and willfully fails to report such abuse or neglect shall  
53 be punished by a fine of up to \$5,000 or imprisonment in the house of correction for not more

54 than 21/2 years or by both such fine and imprisonment; and, upon a guilty finding or a  
55 continuance without a finding, the court shall notify any appropriate professional licensing  
56 authority of the mandated reporter's violation of this paragraph.

57 (d) A report filed under this section shall contain: (i) the names and addresses of the elder  
58 and the elder's parents or other person responsible for the elder's care, if known and applicable;  
59 (ii) the elder's age; (iii) the elder's sex; (iv) the nature and extent of the elder's injuries, abuse,  
60 maltreatment or neglect, including any evidence of prior injuries, abuse, maltreatment or neglect;  
61 (v) the circumstances under which the person required to report first became aware of the elder's  
62 injuries, abuse, maltreatment or neglect; (vi) whatever action, if any, was taken to treat, shelter or  
63 otherwise assist the elder; (vii) the name of the person or persons making the report; (viii) any  
64 other information that the person reporting believes might be helpful in establishing the cause of  
65 the injuries; (ix) the identity of the person or persons responsible for the neglect or injuries; and  
66 (x) other information required by the department.

67 (e) A mandated reporter who has reasonable cause to believe that a elder has died as a  
68 result of any of the conditions listed in subsection (a) shall report the death to the district attorney  
69 for the county in which the death occurred and the office of the chief medical examiner as  
70 required by clause (16) of section 3 of chapter 38. Any person who fails to file a report under this  
71 subsection shall be punished by a fine of not more than \$1,000.

72 (f) Any person may file a report under this section if that person has reasonable cause to  
73 believe that a elder is suffering from or has died as a result of abuse or neglect.

74 (g) No mandated reporter shall be liable in any civil or criminal action for filing a report  
75 under this section or for contacting local law enforcement authorities or the elder care advocate,

76 if the report or contact was made in good faith, was not frivolous, and the reporter did not cause  
77 the abuse or neglect. No other person filing a report under this section shall be liable in any civil  
78 or criminal action by reason of the report if it was made in good faith and if that person did not  
79 perpetrate or inflict the reported abuse or cause the reported neglect. Any person filing a report  
80 under this section may be liable in a civil or criminal action if the department or a district  
81 attorney determines that the person filing the report may have perpetrated or inflicted the abuse  
82 or caused the neglect.

83 (h) No employer shall discharge, discriminate or retaliate against a mandated reporter  
84 who, in good faith, files a report under this section, testifies or is about to testify in any  
85 proceeding involving elder abuse or neglect. Any employer who discharges, discriminates or  
86 retaliates against that mandated reporter shall be liable to the mandated reporter for treble  
87 damages, costs and attorney's fees.

88 (i) Within 30 days of receiving a report from a mandated reporter, the department shall  
89 notify the mandated reporter, in writing, of its determination of the nature, extent and cause or  
90 causes of the injuries to the elder and the services that the department intends to provide to the  
91 elder or the elder's family.

92 (j) Any privilege relating to confidential communications, established by sections 135 to  
93 135B, inclusive, of chapter 112 or by sections 20A and 20B of chapter 233, shall not prohibit the  
94 filing of a report under this section or a care and protection petition under section 24, except that  
95 a priest, rabbi, clergy member, ordained or licensed minister, leader of a church or religious body  
96 or accredited Christian Science practitioner need not report information solely gained in a  
97 confession or similarly confidential communication in other religious faiths. Nothing in the

98 general laws shall modify or limit the duty of a priest, rabbi, clergy member, ordained or licensed  
99 minister, leader of a church or religious body or accredited Christian Science practitioner to  
100 report suspected elder abuse or neglect under this section when the priest, rabbi, clergy member,  
101 ordained or licensed minister, leader of a church or religious body or accredited Christian  
102 Science practitioner is acting in some other capacity that would otherwise make him a mandated  
103 reporter.

104 (k) A mandated reporter who is professionally licensed by the commonwealth shall  
105 complete training to recognize and report suspected elder abuse or neglect.

106 Section 3. The department shall establish a training program for identifying elder abuse  
107 and neglect.