

HOUSE No. 4494

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 14, 2018.

The committee on Elder Affairs to whom was referred the petition (accompanied by bill, House, No. 339) of Tackey Chan and others relative to mandated reporting of elder abuse, reports recommending that the accompanying bill (House, No. 4494) ought to pass.

For the committee,

DANIELLE W. GREGOIRE.

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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 in Chapter 19A the following new
2 section:-

3

4 Section 42. Protection and Care of Elders

5

6 Section 1. Definitions

7 “Department”, shall mean the Executive Office of Elder Affairs.

8 “Elder”, persons over the age of 60.

9 "Mandated reporter", a person who is: (i) a physician, medical intern, hospital personnel,
10 medical examiner, psychologist, emergency medical technician, dentist, nurse, chiropractor,
11 podiatrist, optometrist, osteopath, allied mental health and human services professional licensed

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

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

34

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

39

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

42

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

46 If hospital personnel collect physical evidence of abuse or neglect of an elder, the local
47 district attorney, local law enforcement authorities, and the department shall be immediately
48 notified.

49

50 (c) Notwithstanding subsection (g), whoever violates this section shall be punished by a
51 fine of not more than \$1,000. Whoever knowingly and willfully files a frivolous report of elder
52 abuse or neglect under this section shall be punished by: (i) a fine of not more than \$2,000 for the
53 first offense; (ii) imprisonment in a house of correction for not more than 6 months and a fine of
54 not more than \$2,000 for the second offense; and (iii) imprisonment in a house of correction for

55 not more than 2 and 1/2 years and a fine of not more than \$2,000 for the third and subsequent
56 offenses.

57

58 Any mandated reporter who has knowledge of elder abuse or neglect that resulted in
59 serious bodily injury or death of an elder and willfully fails to report such abuse or neglect shall
60 be punished by a fine of up to \$5,000 or imprisonment in the house of correction for not more
61 than 2 and 1/2 years or both; and, upon a guilty finding or a continuance without a finding, the
62 court shall notify any appropriate professional licensing authority of the mandated reporter's
63 violation of this paragraph.

64

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

75

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

81

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

84

85 (g) No mandated reporter shall be liable in any civil or criminal action for filing a report
86 under this section or for contacting local law enforcement authorities or the elder care advocate,
87 if the report or contact was made in good faith, was not frivolous, and the reporter did not cause
88 the abuse or neglect. No other person filing a report under this section shall be liable in any civil
89 or criminal action by reason of the report if it was made in good faith and if that person did not
90 cause or participate in the reported abuse or neglect. Any person filing a report under this section
91 may be liable in a civil or criminal action if the department or a district attorney determines that
92 the person filing the report may have caused or participated in the abuse or neglect.

93

94 (h) No employer shall discharge, discriminate or retaliate against a mandated reporter
95 who, in good faith, files a report under this section, testifies or is about to testify in any
96 proceeding involving elder abuse or neglect. Any employer who discharges, discriminates or

97 retaliates against that mandated reporter shall be liable to the mandated reporter for treble
98 damages, costs and attorney's fees.

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

103

104 (j) Any privilege relating to confidential communications, established by sections 135 to
105 135B, inclusive, of chapter 112 or by sections 20A and 20B of chapter 233, shall not prohibit the
106 filing of a report under this section or a care and protection petition under section 24, except that
107 a priest, rabbi, clergy member, ordained or licensed minister, leader of a church or religious body
108 or accredited Christian Science practitioner need not report information solely gained in a
109 confession or similarly confidential communication in other religious faiths. Nothing in the
110 general laws shall modify or limit the duty of a priest, rabbi, clergy member, ordained or licensed
111 minister, leader of a church or religious body or accredited Christian Science practitioner to
112 report suspected elder abuse or neglect under this section when the priest, rabbi, clergy member,
113 ordained or licensed minister, leader of a church or religious body or accredited Christian
114 Science practitioner is acting in some other capacity that would otherwise make him a mandated
115 reporter.

116

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

119

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