HOUSE DOCKET, NO. 971 FILED ON: 1/29/2021

HOUSE . . . . . No. 731

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:
Tackey Chan	*2nd Norfolk*	*1/29/2021*
Michelle M. DuBois	*10th Plymouth*	*2/26/2021*
Steven S. Howitt	*4th Bristol*	*3/3/2021*
Vanna Howard	*17th Middlesex*	*3/8/2021*

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By Mr. Chan of Quincy, a petition (accompanied by bill, House, No. 731) of Tackey Chan and others relative to mandated reporting of elder abuse. Elder Affairs.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *603* OF 2019-2020.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

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:

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

Chapter 119B. Protection and Care of Elders

Section 1. Definitions

“Department” shall mean the Executive Office of Elder Affairs

“Elder” Persons over the age of 60.

"Mandated reporter", a person who is: (i) a physician, medical intern, hospital personnel engaged in the examination, care or treatment of persons, medical examiner, psychologist, emergency medical technician, dentist, nurse, chiropractor, podiatrist, optometrist, osteopath,

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

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

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

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

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

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

(c) Notwithstanding subsection (g), whoever violates this section shall be punished by a fine of not more than $1,000. Whoever knowingly and willfully files a frivolous report of elder abuse or neglect under this section shall be punished by: (i) a fine of not more than $2,000 for the first offense; (ii) imprisonment in a house of correction for not more than 6 months and a fine of not more than $2,000 for the second offense; and (iii) imprisonment in a house of correction for not more than 21/2 years and a fine of not more than $2,000 for the third and subsequent offenses.

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

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

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

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

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

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

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

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

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

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

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

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

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