

SENATE No. 366

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

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 protecting vulnerable elders from abuse.

PETITION OF:

NAME:

James B. Eldridge

DISTRICT/ADDRESS:

Middlesex and Worcester

SENATE No. 366

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 366) of James B. Eldridge for legislation to protect vulnerable elders from abuse. Elder Affairs.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act protecting vulnerable elders from 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 SECTION 1. Section 4 of chapter 19A of the General Laws, as appearing in the 2020
2 Official Edition, is hereby amended by striking out the first paragraph and inserting in place
3 thereof the following paragraph:-

4 The department shall be the principal agency of the commonwealth to mobilize the
5 human, physical, and financial resources available to plan, develop, and implement innovative
6 programs to insure the dignity and independence of all elderly persons in the commonwealth,
7 including the planning, development, and implementation of a home care program for the elderly
8 in the communities of the commonwealth.

9 SECTION 2. Section 14 of said chapter 19A, as so appearing, is hereby amended by
10 striking out the second paragraph, and inserting in place thereof the following paragraphs:-

11 “Abuse”, (a) an act or omission which results in serious physical or emotional injury to
12 an elderly person or financial exploitation of an elderly person; (b) the failure, inability or

13 resistance of a caretaker to provide for the elderly person one or more of the necessities essential
14 for physical and emotional well-being without which the elderly person's safety would be
15 compromised; or (c) the failure, inability, or resistance of an elderly person to provide for
16 themselves one or more of the necessities essential for physical and emotional well-being without
17 which the elderly person's safety would be compromised. No person shall be considered to be
18 abused or neglected for the sole reason that such person is being furnished or relies upon
19 treatment in accordance with the tenets and teachings of a church or religious denomination by a
20 duly accredited practitioner thereof. No elderly person residing in a prison or house of correction
21 shall be considered to be abused or neglected for the sole reason that a staff member, contractor,
22 or volunteer uses physical contact with the person which harms that person, if: (a) the physical
23 contact with the elderly person occurs in the course of carrying out the staff member, contractor,
24 or volunteer's official duties performed in accordance with the regulations contained at 103
25 C.M.R.; and (c) both the type of physical contact involved and the amount of force used are
26 necessary in order to carry out the staff member, contractor, or volunteer's official duties.

27 Physical contact with an elderly person residing in a prison or house of correction which
28 harms that elderly person, and which occurs for the purpose of retaliating against that elderly
29 person, shall constitute abuse.

30 SECTION 3. Said section 14 of said chapter 19A, as so appearing, is hereby further
31 amended by striking out the third paragraph, and inserting in place thereof the following
32 paragraph:-

33 "Caretaker", the person or agency responsible for the care of an elderly person, which
34 responsibility may arise: (a) as the result of a family relationship; (b) by a voluntary or

35 contractual duty undertaken on behalf of an elderly person, or (b) by a fiduciary duty imposed by
36 law. Caretakers shall include any person or agency responsible for an elderly person's health or
37 welfare in any custodial or residential facility unless that facility is licensed under sections 51,
38 57D or 71 of chapter 111. A person or agency responsible for the health or welfare of an elderly
39 person who has been involuntarily committed under chapter 123 shall be a caretaker, even if the
40 facility in which the elder resides is licensed under sections 51, 57D, or 71 of chapter 111.

41 SECTION 4. Said section 14 of said chapter 19A, as so appearing, is hereby further
42 amended by adding the following paragraph:-

43 "State agency", any agency of the commonwealth, including town, city, county, and other
44 municipal government agencies, that provides services or treatment to elderly persons, including
45 private agencies providing such services or treatment pursuant to a contract or agreement with an
46 agency of the commonwealth.

47 SECTION 5. Section 15 of said chapter 19A, as so appearing, is hereby amended by
48 striking out subsections (d), (e), and (f) and inserting in the place thereof the following
49 subsections:-

50 (d) No person required to report pursuant to the provisions of subsection (a) shall be
51 liable in any civil or criminal action by reason of such report; provided, however, that such
52 person did not perpetrate, inflict or cause said abuse. No other person making such a report
53 pursuant to the provisions of subsection (b) or (c) shall be liable in any civil or criminal action by
54 reason of such report if it was made in good faith; provided, however, that such person did not
55 perpetrate, inflict or cause said abuse. Any person making a report under subsection (a), (b) or

56 (c) who, in the determination of the department or the district attorney may have perpetrated,
57 inflicted or caused said abuse may be liable in a civil or criminal action by reason of such report.

58 (e) No person, employer, or agency may discharge, demote, transfer, reduce pay, benefits
59 or work privileges, prepare a negative work performance evaluation, or in any manner
60 discriminate against or thereafter take any other retaliatory action against any employee, client or
61 other person for filing a report with the department, testifying in any department proceeding or
62 providing information to the department or their designee in the course of an investigation of
63 alleged abuse of an elderly person. Any person who takes such prohibited action against an
64 employee, client or other person may be liable to that employee, client or other person for treble
65 damages, costs and attorney's fees. If the party alleged to have retaliated under this section was a
66 state agency, sovereign immunity shall not be a defense to the action. A violation of an
67 employee's rights under this section shall constitute a prohibited retaliatory action under
68 subsection (b) of section 185 of chapter 149 if the employee is an employee for purposes of said
69 section 185. A person who willfully files a false report of abuse with the department or willfully
70 testifies falsely or willfully provides the department or any designated investigating agency with
71 false information in the course of an investigation or any other department proceeding shall not
72 be afforded the protections of this subsection.

73 (f) Reports made pursuant to subsections (a) and (b) shall contain the name, address
74 where the elderly person may be contacted, and approximate age of the elderly person who is the
75 subject of the report, information regarding the nature and extent of the abuse, the name of the
76 person's caretaker, if known, any medical treatment being received or immediately required, if
77 known, any other information the reporter believes to be relevant to the investigation, and the
78 name and address of the reporter and where said reporter may be contacted, if the reporter wishes

79 to provide said information. The department shall publicize the provisions of this section and the
80 process by which reports of abuse shall be made.

81 SECTION 6. Said section 15 of said chapter 19A, as so appearing, is hereby amended by
82 adding the following subsection:-

83 (g) Any privilege established by sections one hundred and thirty-five A and one hundred
84 and thirty-five B of chapter one hundred and twelve or section twenty B of chapter two hundred
85 and thirty-three relating to the exclusion of confidential communications shall not prohibit the
86 filing of a report pursuant to the provisions of subsection (a), (b) or (c).

87 SECTION 7. Section 16 of said chapter 19A, as so appearing, is hereby amended by
88 striking out subsection (a) and asserting in place thereof the following subsection:-

89 (a) Subject to appropriation, the department shall develop a coordinated system of
90 protective services for all elderly persons in the commonwealth, except those residing in
91 facilities licensed under sections 51, 57D, or 71 of chapter 111, who are determined to be abused.
92 The protective services system shall also extend to any elderly persons who have been
93 involuntarily committed pursuant to chapter 123, even if they reside in a facility licensed under
94 sections 51, 57D, or 71 of chapter 111. In planning this system, the department shall require
95 input from other protective service agencies and other agencies currently involved in the
96 provision of social, health, legal, nutritional and other services to the elderly, as well as elderly
97 advocacy organizations.

98 SECTION 8. Section 16 of said chapter 19A, as so appearing, is hereby amended by
99 adding the following subsections:-

100 (g) If the department receives a report which alleges the abuse of an elderly person whose
101 caretaker is a state agency, the department shall notify the general counsel of the office of the
102 secretary of health and human services, or his designee, within such office, and the state agency
103 which provides services to the elderly person. The department shall investigate the abuse and
104 arrange for protective services, as provided in section 18. The department shall take reasonable
105 steps to avoid unnecessary, unwarranted or counterproductive duplication between any internal
106 investigation or inquiry by the state agency and the department's investigation. The state agency
107 may, at its discretion, utilize the department's investigation in lieu of an internal investigation
108 conducted by said state agency.

109 (h) The department is authorized to gain immediate access to facilities controlled by state
110 agencies upon receiving a report of elder abuse in such facilities, and to request the disclosure of
111 documents pertaining to allegations of abuse occurring within such facilities.

112 (i) If the department receives a report which alleges the abuse of an elderly person whose
113 caretaker is not a state agency, and who: (1) resides in a facility not licensed under sections 51,
114 57D or 71 of chapter 111; or (2) is involuntarily committed pursuant to chapter 123, the
115 department shall investigate the abuse and arrange for protective services, as provided in section
116 18.

117 (j) If the department receives a report which alleges the abuse of an elderly person who
118 resides in a facility licensed under sections 51, 57D, or 71 of chapter 111, who is not
119 involuntarily committed pursuant to chapter 123, the department shall refer immediately such
120 report to the department of public health.

121 (k) The department shall provide training to all employees conducting investigations or
122 furnishing protective services to elderly persons in the care of state agencies that is specifically
123 focused on best practices when responding to claims of abuse in prisons, jails, commitment
124 centers, and other custodial settings.

125 (l) The department shall issue and implement regulations to ensure that elders in prisons,
126 jails, civil commitment centers, houses of correction, and similar facilities are notified of the
127 department's protective services program and how to report abuse under this chapter.

128 SECTION 9. Said chapter 19A is hereby further amended by striking out section 18, as
129 so appearing, and inserting in place thereof the following section:-

130 (a) The department or its designated agency shall assess and evaluate the information
131 reported pursuant to the provisions of section fifteen.

132 Such assessment shall include a visit to the residence of the elderly person who is the
133 subject of the report, or the facility in which they are living, and may include consultations with
134 appropriate service agencies and individuals who have knowledge of the elderly person's
135 situation including the person filing the report. The elderly person who is the subject of the
136 report shall receive written notice that an assessment is being conducted and shall have the right
137 to review the file and report developed as a result of the assessment.

138 (b) If the elderly person resides in a facility, the assessment shall include a visit to the
139 facility, an evaluation of the environment of the facility, and a written determination of the risk
140 of physical or emotional injury to any other residents or elderly persons in the same facility.

141 (c) If the assessment results in a determination that the elderly person is suffering from
142 abuse, the department or the designated agency shall evaluate the elderly person's functional
143 capacity, situation, and resources and shall develop a service plan for the provision of protective
144 services. Said plan shall be appropriate to the needs of the elderly person and shall utilize the
145 least restrictive alternatives.

146 The department shall adopt rules and regulations establishing time limits for the
147 completion of assessments and evaluations and for the implementation of service plans;
148 provided, however, that if an emergency exists, assessments shall be completed within twenty-
149 four hours of the receipt of the report.

150 If an assessment results in a determination that the elderly person has suffered serious
151 abuse, the department or designated agency shall report such determination to the district
152 attorney of the county where the abuse occurred within forty-eight hours. The district attorney
153 may investigate and decide whether to initiate criminal proceedings.

154 (d) If the elderly person's caretaker is a state agency, upon the completion of the
155 assessment, the department may forward a copy of the report developed as a result of the
156 assessment to the state agency and any other agency of the Commonwealth who has jurisdiction
157 over the alleged victim, the matter under investigation, or associated professional misconduct,
158 including, but not limited to, the attorney general or appropriate district attorney, for possible
159 prosecution or the imposition of remedial or disciplinary measures in accordance with the
160 requirements of any applicable law or regulation.

161 The report shall contain the information acquired during the assessment and all other
162 information deemed appropriate by the department, including appropriate recommendations to

163 remedy any substantiated abuse and improve the safety of elderly persons cared for by the state
164 agency.

165 In addition, regardless of whether abuse is substantiated or not, the designated
166 investigator may make a determination that a violation of other state statutes and/or regulations
167 may exist and whether such a violation poses a risk of harm to elderly persons. If such a
168 violation is suspected the investigator may make recommendations regarding actions needed to
169 remedy the suspected violation, including, but not limited to, referral of the matter to the
170 appropriate agency of the commonwealth that has jurisdiction over the violation.

171 (e) The department or the designated agency shall provide or arrange for protective
172 services in accordance with the service plan developed pursuant to the provisions of subsection
173 (c). Protective services shall include, but not be limited to, the following: the capacity to respond
174 to an emergency; protective services case work; the capacity to provide or arrange for a
175 homemaker, home-health aide, transportation, legal assistance, counseling, nutrition services,
176 guardianship and conservatorship, protective order through the court, emergency shelter, foster
177 care, adult day care services, assistance in applying for medical parole, as described in section
178 119A of chapter 127, and assistance in applying for a reasonable accommodation.

179 (g) The department or the designated agency is authorized to arrange for additional
180 services necessary to assist and protect elderly persons who have been abused, including, but not
181 limited to, the following: medical care, mental health care and emergency financial assistance.

182 SECTION 10. Section 22 of said chapter 19A, as so appearing, is hereby amended by
183 adding the following paragraph:-

184 No elderly person residing in a prison, jail, civil commitment center, house of correction,
185 or similar facility shall be charged for the provision of protective services.

186 SECTION 11. Said chapter 19A is hereby further amended by striking out section 24, as
187 so appearing, and inserting in place thereof the following section:-

188 (a) Within 120 days following the end of each fiscal year, the department shall submit a
189 report to the governor, the general court and the public which shall include a description of the
190 activities of the department and all designated agencies pursuant to sections fourteen to 26,
191 inclusive, during the preceding fiscal year. Said report shall contain:

192 (1) statistical information about the number and types of reports received under section
193 fifteen;

194 (2) the results of the assessments and evaluations conducted and the amount, type and
195 costs of services provided under section eighteen;

196 (3) information on the quality of services provided and the results of such services in
197 terms of alleviating abuse;

198 (4) the number of reports of abuse of elderly persons in the care of a state agency;

199 (5) the number of reports of abuse of elderly persons in the care of a state agency that
200 resulted in a substantiated finding of abuse;

201 (6) the number of cases referred by the department to a prosecutor;

202 (7) the number of cases referred to a prosecutor in which the elderly person who was
203 abused was in the care of a state agency;

204 (8) any recommendations issued by the department to a state agency for the purpose of
205 preventing and remediating elder abuse;

206 (9) the number of reports of abuse of elderly persons in covered facilities, who are not in
207 the care of a state agency; and

208 (10) the number of reports of abuse of elderly persons in covered facilities, who are not in
209 the care of a state agency, which resulted in a substantiated finding of abuse.

210 (b) Said report shall identify problems that may arise in the implementation of this
211 chapter and shall contain the recommendations of the department for action on the part of the
212 legislature.

213 (c) Within 120 days following the end of each fiscal year, each state agency responsible
214 for the care or custody of elderly persons shall submit a report to the governor, the general court
215 and the public, describing the state agency's actions taken during the preceding three fiscal years
216 in response to recommendations issued to the state agency by Elder Affairs, if any
217 recommendations were made during the preceding three fiscal years. Said report shall also
218 include the number and type of employment actions taken as a result of substantiated findings of
219 abuse of elderly persons within the agency's care.

220 SECTION 12. Section 25 of said chapter 19A, as so appearing, is hereby amended by
221 striking out the word "twenty-four," and inserting in place thereof the word "twenty-six."

222 SECTION 13. Said chapter 19A is hereby further amended by striking out section 26, as
223 so appearing, and inserting in place thereof the following section:-

224 Section 26.

225 (a) Nothing in this chapter shall be construed to be a limitation of the powers and
226 responsibilities assigned by law to other departments or agencies, nor shall this chapter be
227 construed to relieve any such department or agency of its obligations to investigate and respond
228 appropriately to alleged incidents of abuse.

229 (b) If the department determines that an investigation under this section or section 18
230 would duplicate or interfere with an ongoing investigation by law enforcement officials
231 concerning possible criminal conduct arising out of the same conduct, it may, in consultation
232 with the secretary of health and human services, delay or defer such investigation, if the
233 department determines that the health and the safety of elderly persons shall not be adversely
234 affected thereby and that the department's ability to conduct a later investigation shall not be
235 unreasonably impaired by such delay or deferral. In all cases including, but not limited to, those
236 in which the department agrees to delay or defer its investigation, the attorney general or district
237 attorney shall keep the department informed of the status of the criminal investigation and the
238 department shall provide to the attorney general or the district attorney any and all information
239 that may be relevant to the criminal investigation. In cases in which the department agrees to
240 delay or defer its investigation, it shall monitor the progress of the criminal investigation and
241 shall determine, after consultation with such law enforcement agencies, when or whether the
242 department's investigation should be initiated or resumed.

243 (c) If the department or a protective services agency receives a report of abuse of an
244 elderly person who is in the care or custody of a state agency, the state agency shall immediately
245 allow the department or the protective services agency to enter and inspect facilities of the state
246 agency. The state agency shall furnish a space in which an investigator or investigators may meet
247 confidentially with the elderly person and any necessary witnesses for any length of time deemed

248 necessary by the protective services agency. The state agency shall allow the investigator to meet
249 with the elderly person and any necessary witnesses. If the elderly person is in need of medical
250 care, the investigator shall collaborate with the state agency to ensure that the elderly person
251 receives appropriate medical care.

252 (d) The department shall have full access to any facility run by a state agency which is
253 responsible for the care of elderly persons, in consultation with the leaders of the state agency.
254 The state agency shall provide the department access to any relevant records pertaining to a
255 report of abuse and the alleged victim.

256 (e) If, upon completion of investigation of a report of abuse of an elderly person whose
257 caretaker is a state agency there is reasonable cause to conclude that such abuse did occur, or
258 whenever, upon its own motion, the department determines that a formal hearing is necessary to
259 ascertain the scope and remedy of such abuse of elderly persons whose caretaker is a state
260 agency, the department may initiate a formal investigation, including a hearing, to determine the
261 nature and the extent of such abuse and what recommendations, if any, should be made with
262 respect to such occurrence. Testimony in department proceedings may, in the discretion of the
263 department, be recorded and taken under oath. The department may, in its discretion, permit any
264 party to testify, to call and examine witnesses, to introduce evidence or to cross-examine
265 witnesses. Before testifying, all witnesses shall be given a copy of the regulations governing the
266 department proceedings. Each witness shall be entitled to be represented by counsel and may
267 refuse to submit evidence or give testimony if such evidence or testimony could tend to
268 incriminate him. All proceedings of the department shall be public unless the department, in
269 consultation with the secretary of health and human services, votes to go into executive session.
270 Any person whose name is mentioned during a proceeding under this section and who may be

271 adversely affected by any action of the department as a result of the proceedings shall have the
272 right to appear personally, to be represented by counsel in connection with the proceedings, to
273 call and examine witnesses, to introduce evidence or to cross-examine witnesses.

274 (f) Upon the completion of any formal investigation, the department shall: (1) issue a
275 written report and refer the same to the appropriate state agency. Such report shall contain
276 findings of fact concerning the alleged occurrence of abuse that was the subject of the
277 investigation, together with a finding as to whether or not such abuse did occur and, if so, what
278 actions are necessary to remedy the causes of such abuse or to prevent its reoccurrence; (2) refer
279 any matters for which there is reason to believe that a crime has been committed to the attorney
280 general, the United States attorney or a district attorney for the county wherein such crime was
281 committed; (3) refer any matters for which there is reason to believe that employee misconduct
282 has occurred to the state agency employing such person for imposition of disciplinary measures
283 in accordance with the requirements of any applicable law, regulation or collective bargaining
284 agreement; or (4) refer any matters for which there is reason to believe that misconduct has
285 occurred by a contractor with a state agency or by such contractor's agent, to the state agency
286 contracting with such party for termination of such contract or for such other action as may be
287 deemed appropriate by such state agency.